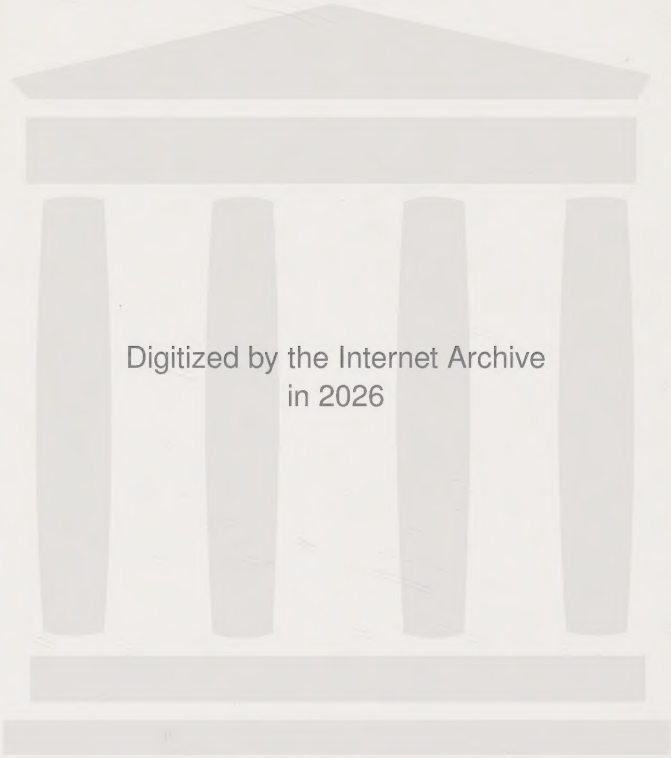
Digitized by the Internet Archive
in 2026

https://archive.org/details/unionofsouthafri0000honr_x3l4

# THE UNION OF SOUTH AFRICA

BY

THE HON. R. H. BRAND

SOMETIME FELLOW OF ALL SOULS COLLEGE
OXFORD
SECRETARY TO THE TRANSVAAL DELEGATES AT THE
SOUTH AFRICAN NATIONAL CONVENTION

NEGRO UNIVERSITIES PRESS
NEW YORK

Originally published in 1909
by The Clarendon Press

Reprinted 1969 by
Negro Universities Press
A Division of Greenwood Publishing Corp.
New York

PRINTED IN UNITED STATES OF AMERICA

# PREFACE

THE aim of this book is to give a short sketch of the leading features of the South African Constitution. In order to make the subject intelligible, it has been necessary to refer also to the history of the movement towards Union. But the chapter dealing with this aspect of the question has been made intentionally brief. Those who wish for more details are referred to Lord Selborne's memorandum, entitled *A Review of the Present Mutual Relations of the British South African Colonies*, published in England as a Blue Book in 1907, and to *The Government of South Africa*, an anonymous work in two volumes, published by the *Cape Times*, Limited, Cape Town, in 1908. For the purposes of reference the South Africa Act is printed as an appendix.

The sketch of the Constitution might have been more interesting to the layman, had it been possible to supplement it by some account of the proceedings of the National Convention itself. But the Convention sat with closed doors, and secrecy is still maintained as to its proceedings. No reference to them could therefore be made without a breach of confidence.

As I have held an official position in the public service of the Transvaal and Orange River Colony during the past seven years, first under Crown Colony and then under Responsible Government, it may be as well to state that the opinions expressed in the following pages are purely personal to myself.

R. H. BRAND.

*London*, Oct. 1909.

ALLES ZAL RECHT KOMEN

*—President Sir John Brand*

# CONTENTS


PAGE

CHAPTER I

PRELIMINARY . . . . . 7

CHAPTER II

HISTORICAL . . . . . 14

CHAPTER III

THE CONVENTION . . . . . 32

CHAPTER IV

THE CONSTITUTION . . . . . 43

CHAPTER V

THE EXECUTIVE . . . . . 55

CHAPTER VI

THE LEGISLATURE . . . . . 63

CHAPTER VII

PROVINCIAL CONSTITUTIONS . . . . . 75

CHAPTER VIII

THE JUDICATURE . . . . . 87

CHAPTER IX

FINANCE AND RAILWAYS . . . . . 89

CHAPTER X

THE NATIVES . . . . . 97

CHAPTER XI PAGE

General Reflections on the Constitution . 114

CHAPTER XII

The Future of Parties . . . . . 119

CHAPTER XIII

South Africa and the Empire . . . 131

APPENDIX

South Africa Act, 1909 . . . . . 137

# CHAPTER I

## PRELIMINARY

SHORTLY after the draft Constitution of South Africa was published in February last, Sir Percy Fitzpatrick, one of the Transvaal delegates, in a speech at Johannesburg, delivered a panegyric upon it as being the finest constitution in the world. A few days later General Smuts, in the course of a speech at Pretoria, remarked that to him much more wonderful than the Constitution itself were the signatures at the end of it. General Smuts was right. South African politics have always been kaleidoscopic, but no political whirligig has been so astonishing or so complete as that of the last twelve months. What would President Kruger have said in 1899 if he had been told that in less than seven years after the complete destruction of the Republics and their annexation to the British Empire, a Constitution embodying all that the Uitlanders had struggled for would have been enthusiastically accepted by all parties and races in South Africa? Would he have believed his eyes had he seen appended to that document, side by side, the names of Dr. Jameson, who raided the independent Republic of the Transvaal in order to overthrow its government, and General Botha, who, then a leading citizen of that Republic, is said to have demanded

that Dr. Jameson should be shot as a freebooter; of Sir Percy Fitzpatrick, the author of a violent attack on Krugerism, and Mr. Abraham Fischer, who in his capacity as interpreter at the Bloemfontein Conference of 1898 between President Kruger and Lord Milner, is credited with having been by no means the least important actor in that drama; of Sir George Farrar, who, as one of the leading reformers on the Rand, was, in company with Lionel Phillips, Frank Rhodes, and Hayes Hammond, condemned to death by Mr. Gregorowski, then a judge of the Republic, now a barrister and a member of the Transvaal Parliament, and Mr. Steyn, then president of a republic on close terms of alliance with the government to which the reformers had been so bitterly hostile; of Dr. Smartt, the ardent supporter of the British cause in the Cape Colony and the strenuous advocate, after the war, of the suspension of the constitution in that colony, and Mr. Merriman and Mr. Sauer, who were bitter opponents of that policy, and who have never ceased since to express their detestation of Lord Milner and all his works; of General Smuts and Mr. Hull, now Ministers of the Crown in the same government, the one a leading member of Kruger's government at the outbreak of the war, the other one of the most prominent of the reformers? But, strange though so sudden a reconciliation of such diverse elements appears on the surface, to those who know South Africa it is a natural outcome of her history. In

no country is the growth of a common nationality more certain, and the creation of one controlling government more imperative. The country, vast as it is in area, is destined by nature to be one. Its physical characteristics are uniform, and there are no natural barriers between one part and another. The population forms, and in reality formed even before the war, one body politic. Not only is a Boer of the Cape Peninsula identical in all essentials of character and ideas with a Boer of the Zoutpansberg, but, as Mr. Bryce long ago remarked, the inhabitants of the towns, whether of Cape Town or Johannesburg, Durban or Pretoria, are connected by the closest ties of blood and friendship and form to a large extent one society. With modern facilities of communication all this made political union in some form or other, and either sooner or later, inevitable.

South Africa throws a spell not only over those who have been born and bred in her, but even over the immigrant who has known her but for a few years. Apart from their passionate attachment to the soil itself, South Africans of both races love their country for her varied and romantic history, and both English and Dutch cherish a common patriotism which springs from a pride in the many deeds of courage recorded in her annals. Hitherto the existence of two conflicting ideals, the spirit of Dutch Africanderism on the one hand and of British dominance on the other, has caused the current of national feeling to flow in separate

channels. But since the war has eradicated this profound cause of conflict, the barrier between the channels has been thrown down and the last obstacle to the formation of a common patriotism removed. It is, therefore, no paradox to assert that out of war has come harmony. Without the war South Africa might have found in time a common nationality and a common aim, but who can tell after what vicissitudes and struggles, and under what flag, the union would have been consummated? Some politicians in England, while they hail the advent of union, continue to denounce the policy which alone has made it possible. They condemn the war, and yet claim its results as a triumph of Liberal policy. The grant of self-government to the two new colonies in 1906 has indeed hastened the attainment of union, and for this the Liberal party may justly take credit, but the impartial historian of the future, weighing the actions of British statesmen in the cause of union, will undoubtedly give the first place, not to Sir Henry Campbell-Bannerman, but to Lord Milner and Mr. Chamberlain.

Hopeful, however, as is the future, it is useless to suppose that racialism will never trouble South Africa again. The new spirit animating the leaders of both sides has been generously welcomed by both the British and Dutch communities. But in the working out of the constitution the differing ideals of the two races cannot fail to clash. Bi-lingualism, whether

in education or in the public service, will cause trouble for many years. Recent events are a sufficient proof. The education law of the Orange River Colony, whatever its merits or demerits, has certainly been read by the British population as an attempt to deprive their children of any proper instruction in the English tongue. Efforts have been made to found private schools where English can be properly taught. The government has dismissed English and Scotch inspectors for their alleged unsympathetic administration of the law. A deputation has been sent to England to represent the grievances of the British people. There is every sign of strong feeling. Less is heard of the difficulties in the Transvaal, where the law is less rigid. But any one who has any knowledge of the subject is aware that there, too, administration is hampered by constant friction arising from local quarrels and jealousies over language. Nevertheless one cannot doubt that these difficulties will in time disappear. There are influences at work too strong to be controlled by legislation. As a general rule English parents are prepared that their children shall learn Dutch; while Dutch parents see how essential is a knowledge of English. A story which well illustrates this tendency is told of a small dorp in the Orange River Colony. A Scotch parent complained to the Education Department that his small daughter had been submitted in the playground of the school to the indignity of having a wooden collar placed round her neck. On

inquiry it was found that the parents, most of whom were Dutch, thinking that too little English was taught in school hours, had asked that that language might be used during the play hours. There had been invented, in consequence, a mode of punishment which consisted in fastening a wooden collar round the neck of any child who used a Dutch word in the playground.

A conflict is also possible in the comparatively near future over the policy of encouraging immigration on lines which the British party will consider of the utmost importance, but which a large section of the Dutch will probably resist. Immigration as free as that into perhaps more favoured countries is indeed out of the question, since at present practically all unskilled labour, whether industrial or agricultural, is restricted to Kaffirs. But there is a great need of enterprising and progressive farmers with a small capital. The encouragement of this kind of immigrant would do much to quicken the country's progress. It is, too, at the moment the best and easiest way of strengthening the white population against the black. But there is a very general prejudice, particularly strong among the Dutch, against the newcomer with which the advocates of immigration will have to reckon.

In any forecast of the future it must not be forgotten that the new ideas, freely absorbed by the urban communities, are not likely to have so thoroughly permeated the back veld. The national

sentiments and feelings of the Dutch have been forged by blood and iron, and for many years their patriotism will take what to an ardent imperialist may seem a narrow form. But its development, though gradual, will be sure. It will be enormously accelerated if the Dutch leaders continue to be imbued with that spirit of toleration for all parties which has been so conspicuously displayed by General Botha, General Smuts, and President Steyn.

But, in addition to the all-powerful force of national sentiment, there are other strong causes disposing the peoples of the different colonies to sink their differences. Inter-colonial relations since the war have been far from harmonious. Indeed, men had begun to see that the parting of the ways had been reached, and that if the different states were not soon welded firmly together they would inevitably fly asunder. Some knowledge of the causes of inter-colonial conflict is an essential preliminary to a study of the Constitution.

# CHAPTER II

## HISTORICAL

More than one attempt has been made in South Africa's history to make her one nation. A short but admirable sketch of the subject is given in Lord Selborne's well-known memorandum upon union. The disunion of the South African people and the want of understanding between the British Government and the South African Governments caused all such attempts to fail, and the trials and calamities which have fallen upon South Africa in the last fifty years have been the result. The failure of the last attempt, made by Lord Carnarvon in 1876, was decisive. From that moment the people of the north entered upon a path which led them further and further apart from their southern and eastern neighbours. This was inevitable. The Boers had sought their independence through dislike of the British rule. It was their chief object to guard it by becoming strong and self-sufficient. In Delagoa Bay they found an outlet, which freed them from economic dependence on the Cape Colony and Natal, and as their strength grew, so did their national patriotism and their determination never willingly to accept the British flag. Thus their object was to have as little real connexion as was possible with their neighbours. As time passed, the true effect of

disunion, the growth of national ideals not merely conflicting but contradictory, became apparent; and, when all other means had failed, the issue was set finally at rest by the arbitrament of the sword. With the resumption of civil government there reappeared economic rivalries between the colonies which, while always existing, had formerly been overshadowed by the racial conflict. These rivalries, which centred round the questions of customs dues and railway rates, the adoption of a common flag had done nothing to exorcise. It is difficult for those who live in a united and long settled country like Great Britain, where economic activities are left mainly to individual enterprise, to understand the immense part which economic questions play in the relations between the governments of new countries such as Australia and South Africa. In a community whose main object is to develop resources hitherto untouched, and where the government's main work is to foster such development, freedom to adapt customs dues and railway rates to the rapidly changing needs of the community is a matter of life and death. It is, therefore, no cause for surprise that politics should focus themselves round such questions.

Questions of customs dues had always led to bad feeling. In old days the Cape Colony and Natal, controlling all the means of ingress into the inland colonies, had used their power in a manner which can only be termed unscrupulous. Like the robber barons of the Rhine, they forced all

who passed by to pay toll. For years their treasuries simply took all the produce of the duties paid on goods consigned to the Transvaal and Orange Free State. Later they were content with a fee of 25 per cent., which was supposed to represent the cost of collecting the duties, a cost which now certainly does not exceed 5 per cent. The extortions of the coast colonies led to a result which soon made them repent of their rapacity, but not before much bad blood had been created. The Transvaal turned to Delagoa Bay. To this day, as a consequence, the Boers of the Transvaal look upon Delagoa Bay as peculiarly their own port, whose interests must be defended in opposition to those of the harbours in British territory. The coast colonies came to terms, and an attempt, partially successful, was made to form a Customs Union, though before the war it never included every South African state.

Soon after the war, Lord Milner, who saw the urgent necessity for a common fiscal policy, summoned a conference at Bloemfontein, and succeeded in persuading all the colonies to join a Customs Union. The arrangement, though carried to completion, was not popular, and was indeed only ratified in the Cape Parliament by a majority of one vote. Nevertheless, it has been maintained to this day. But its life has been a precarious one. Twice since, once in 1906 and again in 1908, it has been denounced by one or other colony. Conferences have met to patch up an agreement. No

colony has been satisfied. One has had too much revenue from customs; another too little; one has wished for higher protective duties for the purpose of stimulating South African production; another has demanded lower duties in order to cheapen the cost of living. The Transvaal, with its large industrial centre in Johannesburg, and without any great need for customs revenue, has wished to revise the tariff in the direction of free trade, while the coast colonies, believing that, if manufactures were protected, they would spring up, not in the interior, but at the coast, owing to the lower cost of living and lower wages there, were in favour of higher protection, particularly as that policy coincided with their desire for more revenue. On the other hand, a union of any kind was endangered by the very strong desire of the agricultural population of the Transvaal for protection against the farmers of the Cape Colony. Transvaal farmers regarded the great market of Johannesburg as peculiarly their own preserve, and were clamorous for protection against the successful competition from the Cape. During the year 1908 General Botha had no little difficulty in stemming this demand, to yield to which meant the complete disruption of the Customs Union. For another reason the Union was bound to be unpopular. It was a treaty between different states, and it was framed in secret. Being a treaty it could not be altered by any of the parliaments. It had to be accepted or rejected, as it stood. Its terms were

not, therefore, subject to popular control. Its maintenance has indeed been due rather to the fact that South African statesmen have shrunk from the consequences of its disruption than to any general wish to continue it.

Railway rates have been an even more constant and potent source of inter-colonial conflict. The railways throughout South Africa are state railways, and railway revenues have an extremely important bearing on the financial stability of the several colonies. The traffic to the Witwatersrand is the most profitable of all, and it is for this prize that all governments and ports in South Africa have long contended. The railway from the Cape ports was first in the field, and till about 1894 the Cape, in consequence, secured all the traffic. On the completion of the Natal line Durban also quickly obtained a substantial share. Last of all came Delagoa Bay, but until after the war no very serious competition was met with from that port, where there were at that time few facilities for handling traffic.

The Witwatersrand may thus be compared to the hub of a wheel from which radiate lines to Delagoa Bay, Durban, and the Cape ports. It follows that the government which controlled the railways of the Transvaal was in a commanding position, and could play off the different lines and ports against one another. For years this has been a dominant issue in inter-colonial politics. Any one who cared to read the reports of

the endless railway conferences held since 1895 would find the same story in every one of them. Sir Thomas Price, the general manager of the Central South African Railways, was, in 1908, in exactly the same position as Mr. Middelburg, the general manager of the Netherlands Railway Company, occupied in 1895. He was, in short, able for all practical purposes to dictate his own terms. Important as it was to each port to secure as much of the Rand traffic as it could, it was doubly important to the Governments of the Cape Colony and Natal, for they were accustomed to make their financial stability largely dependent on their railway earnings, and these earnings again were to a great extent dependent on the trade to the Transvaal. Unfortunately for the cause of harmony, the interests of the Transvaal in this matter were diametrically opposed to those of the other colonies. The revenue earned by the Transvaal railways on every ton carried from Delagoa Bay was, owing to the greater mileage within the Transvaal frontiers, much larger than that earned on every ton carried from Durban or the Cape ports The Transvaal Government could hardly be expected to be so altruistic as to prefer the welfare of the ports of the Cape Colony and Natal to that of its own people and divert traffic from the Delagoa Bay line to the Cape and Natal lines. In any case it could hardly have done so, even had it had the desire. For it was bound to the Portuguese Government, and could not act without its con-

sent. In 1901, impelled by the urgent necessity that the mines should recommence working, Lord Milner, without consultation with the Cape Colony or Natal, concluded an agreement with the Portuguese Government. That Government gave certain facilities for the recruitment of native labour for the mines, while Delagoa Bay obtained the security that railway rates would not be altered to its detriment. As Delagoa Bay was put in no better position than it had been in before the war, no one could have foreseen the result which has actually occurred. Owing mainly to the great improvements made in the harbour itself, there has been, ever since 1901, a gradual but sure transference of traffic to Delagoa Bay. That port gets now about 67 per cent. of the whole Rand traffic ; the Cape ports, which in 1894 got 80 per cent., now get about 11 per cent. Durban's share has also been steadily falling.

The Cape and Natal Governments have ever since its conclusion continued to express themselves in terms of great hostility to this agreement, and the British ports have watched with dismay and resentment the gradual diversion of their trade. On the other hand, the more the traffic went to Delagoa Bay, the larger grew the revenues of the Transvaal. The government and people of the Transvaal were not, therefore, inclined to pay much attention to the lamentations of their neighbours. Recently a new treaty has taken the place of Lord Milner's agreement. Its reception in South Africa, to which reference will be made

later, is a good indication of the difficulty of the railway question.

But the situation, bad as it was, would have been worse had it not been for the wise action of Lord Milner in another direction. By the amalgamation of the railways of the Transvaal and Orange River Colony, he had at least secured that the latter colony should share in the prosperity of the Transvaal, and that the inevitable development of Delagoa Bay should not be detrimental to its interests. United to the Transvaal, the Orange River Colony shared in the profits of the Delagoa Bay line. Separated, she would not only have lost this advantage, but would have added double strength to the Transvaal's inclination to turn to Delagoa Bay, for the latter colony would then have earned nothing at all on traffic coming from the Cape ports until it reached Vereeniging, only fifty miles distant from Johannesburg, whereas by the amalgamation it shared in the profits upon the whole line from the Orange River, a distance of between three and four hundred miles. It was this geographical difficulty which led to an open rupture in 1895 between the Cape Colony and the South African Republic, when the latter was forced to yield only by the intervention of the Imperial Government.

But this has been by no means the only quarrel over railways. The construction of every new line, with the consequent alteration of trade routes from the ports, has been since the war the signal

for an immediate struggle between the colonies—one seeking to gain the trade, the other to retain it. Rate wars between the governments have not been avoided, and public opinion has on several occasions been inflamed. The following is one instance out of many. The Orange River Colony Government wished to build a line from Bloemfontein to Kimberley. This meant that some of the Kimberley traffic, which was the most profitable traffic of the Cape Government railways, might be transferred from the Cape ports to Durban. The Cape Government accordingly refused to allow any junction to be made with its lines at Kimberley. The Orange River Colony threatened to build to the border, only three miles from Kimberley, and transport the goods by waggon. The Cape Government replied that it would erect a wire fence along the border and refuse ingress to any goods. Eventually an agreement was reached by which the interests of the Cape ports were protected for a term of years, and Durban prevented from competing, but this was only at the cost of absurdly high rates along the line itself, which go far to hamper its utility.

Numerous attempts have been made to compose these inter-colonial differences, but they have all necessarily failed, since the differences arose from the very fact of disunion. Frequent conferences have been held, but without avail. In 1905, shortly before Lord Milner left South Africa, a conference was held in Johannesburg under his

presidency. At its conclusion he made a moving appeal in words which well illustrate the difficulties which confronted him. He said :

'I do not see how the policy of railway development throughout South Africa can be otherwise than greatly retarded by the fact that under the present system of four separate administrations the benefit to the country generally of any new line is constantly obscured and thrown into the background by considerations of its effect upon the comparative profits from the railways of the several states.

'It may be established on the most conclusive evidence that a particular line is in the general interest and would develop commerce and increase prosperity. Yet that line may be indefinitely blocked because it is going to take money out of the pocket of a particular administration. If there were only one pocket this obstacle would never arise.

'You may to-morrow find that the abandonment of a particular through line in favour of another would involve an enormous saving to the country, yet you may be absolutely debarred from the consideration of the matter, because of the disturbance of state revenues which it would involve. I might give scores of instances to prove the drawbacks of the present system. We have got into a rut, and we shall never get out of that rut until there is community of interest in all the main railways of South Africa. When that is achieved, we shall be able to have a real railway policy for the best development of the country as a whole, which can also be in the interests of the consumer.

'I should like to record, as a parting word, my conviction of the supreme importance of trying to

get over that conflict of State interests in the matter of railways. I know it would be very difficult to adjust all interests, but even if it took six months to arrive at an adjustment, it would be made for all time. What impresses me is that almost every railway question which is brought forward, however trivial it may be, raises the whole controversy, and the battle between conflicting interests has to be fought out over and over again on each occasion. You had far better settle it once for all. Would it not be possible to sit down, and—even if it occupied six months—settle the basis on which all the railways could be worked as one concern, and so end once for all this continual controversy ?

'I do not wish to urge the Conference to adopt any platonic resolutions to-day if they do not wish to, but I am glad to have the opportunity, which will probably be my last, of expressing the strong feeling I have on the subject. What I wish is to see the principle which has been applied to the railways of the Transvaal and Orange River Colony extended to all the State railways of South Africa. I am certain that, whatever may be the prevalent opinion about pooling the railways of the two colonies to-day, when the matter comes to be looked at by the historian, when the subject is seen in all its aspects and consequences, it will be regarded as a good step forward. Whatever else, to which I have been a party in South Africa in the last few years, may be condemned, I am sure that this step will not be condemned in the judgement of the future. I am glad to have had the opportunity of expressing my opinion that it is in the highest interests of South Africa to go further in that direction, and I hope that future conferences will succeed in finding, on these lines, a way out of the very great difficulties that at present exist.'

Since then the dangers which Lord Milner so clearly saw have impressed themselves on the popular imagination. Responsible statesmen in South Africa, who are not accustomed to talk lightly, have expressed their conviction that, if some way out were not soon found, South Africa might, before many years, be plunged once more into internecine strife. Failing the attainment of a complete Union the Transvaal would undoubtedly have gone its own way. It would have broken with the Customs Union and framed a tariff suited purely to its own needs; it would have protected its nascent manufactures and its agriculture against the other colonies, and turned its eyes away from the British ports to Delagoa Bay. Such a policy had great attractions, and it might well have been that for some years the Transvaal would have been more prosperous than she is likely to be in the Union. But its success would have been secured at the expense of its neighbours' prosperity and of South Africa's peace; and conflicts the end of which it is impossible to foresee would have arisen. Nevertheless, it speaks well for the patriotism of the people of the Transvaal that they have paid so little attention to selfish but attractive arguments of this nature.

The economic conflict between the colonies culminated last year in a deadlock. Immediately on the inception of responsible government the Transvaal Government gave notice to the other

Governments of its intention to terminate the present Customs Union. The tariff, which had been agreed upon in 1906 at a Conference in Maritzburg, had been framed with the object of providing more revenue for the Cape Colony and Natal, both of whom were then urgently in need of money. It had been strongly opposed in the Transvaal as needlessly high and as increasing the already excessive cost of living. The Crown Colony Government had defended their action on the ground that they were not prepared so shortly before responsible government to take the momentous step of breaking away from the Customs Union. It was with the intention of securing a readjustment of the tariff to suit the needs of the Transvaal, and also such alterations in railway rates as in the opinion of the new Transvaal Government were needed in the interests both of the coast and the interior, that a Conference was summoned at Pretoria in May, 1908. But in fact all the governments knew that any satisfactory settlement of the problems with which they were confronted was out of the question. The Conference, therefore, with great wisdom, commenced its proceedings by discussing and passing unanimously resolutions pledging the governments to summon a National Convention for the purpose of drafting a constitution for South Africa. It is true that a serious attempt was then made, both in Pretoria and later at Cape Town, to come to some settlement of the

questions for the discussion of which the Conference had ostensibly met. But a deadlock was soon reached. The Transvaal refused to agree to an increase in the customs duties over the scale of 1906; the Cape Colony and Natal refused to accept the Transvaal's proposals for the adjustment of railway rates. Nothing whatever was settled except to continue the settlement of 1906 and to postpone an open rupture until it was known whether complete political union could be secured.

Apart, too, from economic questions which have been more immediately in the public eye, thoughtful men have long seen in the native question also a peril which menaces the future. The enlightened handling—it would be looking too far into the future to say the solution—of this intractable problem will demand the united efforts of the whole South African people under the leadership of the wisest statesmen they can choose. No other nation is faced with a future so perilous. There are, it is true, twice as many negroes in the Southern States as there are in South Africa, but in the United States as a whole the white population vastly outnumbers the black. The white men of the south have behind them the enormous white reservoir of the north. In South Africa there are five Kaffirs to every white man, and they are increasing faster. Already they have a monopoly of all the unskilled labour of the country, and they are beginning to compete in the skilled

trades also. Will the white man be able to hold his own ? The growth of a poor white class which is too ignorant for any skilled trade and yet refuses to do ' Kaffir work ' is an ominous sign. The future relations between races and their reaction one upon the other are obscure, but it is manifest that the white man, far from improving, can only maintain his position by demonstrating that, man for man, he is a better and more efficient instrument of labour than the Kaffir. Some competent observers believe he will do so ; others, more pessimistic, predict the gradual submergence of the white population, or in the alternative the adoption of methods of repression leading to a war of extermination. Whatever the differences of opinion may be, most men recognize that the problem must be treated as one throughout South Africa. Hitherto the opposite policy has been pursued, and must ultimately have led to disaster. The Cape Colony had one native policy ; Natal another entirely different ; the Transvaal and Orange River Colony a third. No one who knows the different stages of development among the different tribes would advocate absolute uniformity of administration. But it is at least necessary that the problem should be viewed as a whole, and that different remedies should not be applied to the same disease. The natives of Pondoland are not very different from those in southern Natal ; but they are living under an entirely different system of government. As it is

the ever-widening gulf between the native policies of the different states not only endangered the achievement of union, but has left to the Union Parliament a threatening problem which must be tackled in the near future. In another generation the gulf would probably have been too wide to be bridged. Apart, too, from the more subtle, though infinitely more dangerous, effects of the interaction between race and race in everyday life, there is the risk of a native war with which one or other of the colonies may not be able to cope. There is little doubt that the white population, if united under one government, is strong enough to deal with any danger of the kind. But the danger of the existing situation and the need for some uniform scheme of local defence were recently illustrated by the Zulu Rebellion in Natal.

Disunion not only brought with it many dangers. It meant also that government was inefficient, cumbrous, and expensive. Four separate systems were needed for the control of one million white inhabitants. There were four Parliaments handling identical problems by means of differing laws ; there were four Courts interpreting these laws in diverse manners ; there were four Governors with their accompaniment of Government Houses, retinues, and staffs ; there were four Governments, driven in every sphere of their activity to recognize the necessity of unity and promptitude of action and yet failing to achieve either ; there were four treasuries, each borrowing

money without regard to the needs of the others; there were confusing differences in many of the laws, especially in such matters as patents, marriage, inheritance, and naturalization. A man might be a British subject in the Cape Colony but not in the Transvaal. Taken alone, all these elements of waste and confusion were a potent argument for Union.

Those also, perhaps few in number, who were capable of grasping the necessities not only of South Africa but of the British Empire, recognizing the rapid development of the imperial situation, and that the empire's fate may well depend on the creation of some form of imperial union within the next twenty or thirty years, foresaw how greatly the difficulties of any action would be increased if no single government were responsible for the affairs of South Africa. South African union is in itself a great step forward in the direction of imperial consolidation. It simplifies at once all imperial problems and particularly that of defence, which for the safety of the empire and its component parts must be grappled with at once.

During the last two years an active work of propaganda in favour of union has been carried on. The necessity of educating public opinion was recognized by Lord Selborne, whose work on behalf of Union during his tenure of the offices of High Commissioner and Governor of the Transvaal is recognized throughout South Africa. His well-known *Review of the Mutual*

*Relations of the British South African Colonies*, published in 1907, is admitted to have had a marked effect on public opinion. The educative progress was continued and carried a step further by the anonymous publication of a work entitled *The Government of South Africa*. The authors aimed at giving an epitome of all the activities of government in South Africa, with the object of explaining defects in the existing systems, so far as they were due to the absence of a central government, and providing the materials of a sound judgement on all those questions which would arise in the formation of a new constitution. The book disavowed any intention of formulating a definite scheme of union, but it is noticeable that the authors found themselves driven to recommend the unitary form of government. Later, closer union societies were formed throughout South Africa. They served the double purpose of centres of propaganda and of an organized force in case an active campaign in favour of the movement were found necessary. Undoubtedly this active work of education not only did much to mould public opinion, but has also been not without its effect on the actual form of the constitution itself.

It was in these circumstances, and with the knowledge of the responsibilities resting upon them, that the members of the Convention appointed by the four Colonial Parliaments met in Durban in October, 1908.

# CHAPTER III

## THE CONVENTION

It is interesting to compare this body, which is likely to become famous in South African history, with that renowned assembly, the Federal Convention of the United States, and the Conventions of Canada and Australia. We are told by John Fiske, the author of *The Critical Period of American History*, that in its composition the Federal Convention of the United States left 'nothing to be desired. In its strength and in its weakness it was an ideally perfect assembly. There were fifty-five men, all of them respectable for family and for personal qualities—men who had been well educated, and had done something whereby to earn recognition in these troubled times. Twenty-nine were university men, graduates of Harvard, Yale, Columbia, Princetown, William and Mary, Oxford, Glasgow, Edinburgh. Twenty-six were not university men'. The thirty-three delegates of the Quebec Convention of 1864, curiously enough the exact number of the South African Convention, are stated by Sir John Bourinot, not perhaps a very critical judge, to have been 'all men of large experience in the work of administration or legislation'; but the names of few of them, with the notable exception of Sir John MacDonald, are known beyond the con-

fines of their native land. The Australian Conventions were conspicuous for their large proportion of able lawyers, possessed of great constitutional learning. The South African Convention was probably different in its character from them all; certainly it was unlike the American Convention. Its outstanding characteristic was the preponderance of the farming element, which is everywhere supposed to be essentially conservative in its nature. Out of the thirty-three delegates, about one-third were farmers pure and simple; the interests of several of the remainder, such as Dr. Smartt and Sir Percy Fitzpatrick, lie largely in farming; and still others, such as General Smuts, Mr. Hull, Sir Henry de Villiers, and a few more, though not themselves actually engaged in farming, are directly interested in it. There were, in addition, about ten lawyers, two or three men connected with commerce and mining, two journalists, and three ex-officials. In contrast to the United States Convention there was a conspicuous absence of university men. A few had been trained at the Cape University, but the famous Universities of Oxford and Cambridge claimed only a single representative in the person of General Smuts. It was not so much for education as for a practical knowledge of the world and of politics that the Convention was conspicuous. South Africa has passed through troubled years, and those men who have played a great part in her affairs have been tried and tested in the

furnace of experience. War itself is a supreme test of character, and no man can successfully pass such a trial without some conspicuous qualities for leadership. Botha, Steyn, Smuts, De la Rey, and De Wet, recognized leaders of the Dutch, have, by their conduct in the struggle for independence, fully earned the confidence and trust of their people; and the qualities that sustained them in war have now been displayed for their country's benefit in the peaceful campaign for union. On the British side, too, the delegates present at the Convention were men whose natural capacities had brought them to the front in the struggles of the last ten or fifteen years. As examples it is only necessary to mention the names of Dr. Jameson, Sir George Farrar, and Sir Percy Fitzpatrick. Then there were others, 'elder statesmen' and men of South African reputation, whose long and bitter political struggles, whether in the Cape Colony or elsewhere, might well have warped their judgements, but upon whom the events of the last three or four years appear to have had a mellowing effect.

The Convention took time over its task. It met first on October 12 in Durban; it completed its work at the end of the first week in February at Cape Town. But it did not sit continuously during these four months. There were two interludes, the first of a fortnight or so between the end of the Durban session and the beginning of that at Cape Town, and the second of nearly three weeks

during the Christmas holidays. Nevertheless, the work was never interrupted. Much was done during the intervals between the regular sittings in putting the Convention's resolutions into the shape of a bill, and in preparing new ground. During the whole of October the Convention remained in Durban. Much progress was made and many difficulties overcome. Then, partly because of the increasing heat, but partly, also, because it was felt necessary that the delegates should have time in the calm of their own homes to reflect on certain very debatable matters under consideration, an adjournment was made to Cape Town. Moreover, the Cape delegates were naturally anxious that the Convention should have an opportunity of seeing for themselves the beauties of the parent city. The Convention remained at Cape Town until it had completed its work of framing a constitution. Some months later there was a short but critical session at Bloemfontein to consider the amendments suggested by the various parliaments.

As this sketch does not pretend to be a history of the movement towards union, it is unnecessary to do more than refer briefly to the proceedings in the respective Parliaments, and the nature of the amendments recommended by them. In the Transvaal there was no opposition at any stage. The leaders of both parties wisely insisted upon the great danger of any tampering with the Constitution signed by the Convention at Cape Town.

They impressed upon their followers the fact that the document was the result of compromises by all parties. It was thus a delicately-balanced equipoise, all parts of which were interdependent, and no alteration could be made without the risk of a total collapse. Their advice was taken, and the draft was agreed to by the Transvaal Parliament without a single amendment being recommended to the Convention.

The delegates in the other colonies also laid stress in their Parliaments on the danger of alteration, but with less success. In the Orange River Colony only one or two amendments were suggested, but they were of vital importance. They related to the burning question of 'equal rights' and 'one vote, one value' Every one knew that the Convention had had great difficulty in coming to any agreement at all on this matter, and that to re-open it again might wreck everything. The amendments recommended by the Parliament of the Orange River Colony were practically identical both in form and substance with those soon after adopted in the Cape Parliament. The Dutch leaders in the Orange River Colony were clearly in sympathy on this point with those leaders of the Bond to whom this part of the Constitution was so objectionable.

In the Cape Parliament, against the advice of all the delegates from that colony, amendments were passed involving the practical abandonment of proportional representation, and the re-opening

of the whole question of 'equal rights'. But, though their reluctance was obvious, the delegates from the Government side found themselves obliged to follow the rank and file of their party, and vote for fundamental alterations in the document which they had signed but a few weeks before. Other amendments, of greater or less importance, most of them of an uncontroversial nature, were also recommended by the Cape Parliament.

In Natal countless amendments were brought forward. Most of them were merely obstructive; some were ridiculous. Several amendments were, however, carried, and the Convention found it necessary, in order to placate Natal, to go as far as possible in accepting them. But none of them did anything to improve either the form or the substance of the Constitution.

In reality, however, the only amendments which proved at the Bloemfontein session of the Convention to be a serious danger were those passed in the Parliaments of the Cape and Orange River Colony. Fortunately, as is explained in Chapter VI, the Convention managed, in the end, to discover a solution of the difficulty.

After the Convention had dealt with the amendments recommended by the Parliaments, the final approval of the different colonies had to be obtained. In none of them except Natal was it considered necessary to adopt any special means of testing the popular feeling. It was correctly

supposed that the Parliaments sufficiently represented the will of the people. In one or two colonies, indeed, there was some agitation for a direct popular vote by means of a *referendum*, but it soon collapsed. The Dutch leaders were strongly opposed to it, and stigmatized it as a new-fangled idea to which their people were quite unaccustomed. So long indeed as the Boers are content to abide by the opinions of their leaders, what was the use of going to the trouble of taking a *referendum*? There was everything to lose and nothing to gain by so doing. Nor did the British population ask for it. They were satisfied with the Constitution, and wished to avoid anything which might cause a delay in carrying the change into effect as soon as possible.

In Natal, on the other hand, there was much less enthusiasm for union, and much more suspicion of the motives of those who were bringing it about. The people of Natal, cut off as they are by the great wall of the Drakensberg from the rest of South Africa, have always lived a life of their own. They have prided themselves on being almost purely British, and on their maintenance of British methods and ideals. It was natural that they should hesitate to abandon their independence and cast in their lot without reserve with the rest of South Africa. To them it seemed equivalent to accepting Dutch dominance. The Natal press was throughout, until almost the very last week or so, wholly opposed to union, and it

seemed very doubtful to which side public opinion leaned. In these circumstances it was desirable to test the feeling of the colony by the most direct means possible. A *referendum* was therefore taken. Contrary to general expectation it revealed an overwhelming majority for union, a good testimony to the sound sense of the people of the colony. For sooner or later Natal must have joined the union. She would have discovered that no other course was possible. There was every reason, therefore, why she should come in willingly at once.

Thus, almost within twelve months of the first step being taken, the project had been carried to completion. In May, 1908, the Pretoria Conference resolved to recommend the summoning of a National Convention; by June, 1909, a South African Constitution had been accepted by every colony.

Unlike its Australian predecessors, the Convention sat in secret, and therefore no reference to its proceedings can be made without a breach of confidence. It is impossible to doubt the wisdom of this procedure. The questions handled were so delicate, and the feeling upon them throughout the country so divided and so acute, that it is not conceivable that an agreement could have been reached in public. It is well known that, on more occasions than one, feeling in the Convention itself ran high. Its work was only brought to a successful issue because no appeal was possible to the

gallery. The public was brought to recognize that the result must in any case be a delicately-balanced equipoise, and, instead of being daily inflamed, was content to wait and pass a final judgement on the completed work. Thus the men who represented it were emboldened to act calmly and with courage, and with a due sense, not only of the immediate present, but of their responsibility towards future generations. As it was, and as must no doubt always be the case in such matters, much was settled outside the Convention itself. Compromises that seemed impossible in the formal atmosphere of the Convention room, settled themselves sooner or later through the medium of personal influences. This process of gradual solution, which was incessant throughout the Convention, would have been impossible in the glare of publicity.

The Convention took its work seriously, and is admitted to have done it well. The Transvaal delegates and no doubt the representatives of the other colonies as well prepared themselves thoroughly for their task. The former, indeed, spent some weeks before the Convention on the work of preparation. All important matters were thoroughly discussed by the delegation as a whole, and as a consequence it arrived on the scene of action united. The Transvaal delegation alone was assisted throughout the Convention by a staff of legal advisers and experts. The solid front presented by the Transvaal

delegates, both British and Dutch, throughout the Convention was of first-rate importance on the result.

It is an ill wind that blows nobody good. All classes in South Africa, politicians and people alike, are sick and tired of disunion. They know the disasters which come from it, and they have experienced the calamities of war, and the leaders know it all better than any one else. They met, therefore, in the determination to have no more of it and to make one big effort for union, so that South Africa might henceforth live in peace. It was this spirit of enthusiasm which alone carried the Convention through its work at Durban and Cape Town. Later events, and particularly the strong opposition of a certain section of the Bond in Cape Colony to provisions which to the British section were fundamental, revealed the thinness of the ice over which the Convention had skated. The proceedings in the Cape Parliament, indeed, completely damped the generous spirit shown at the first two sessions of the Convention. But this, after all, was only a temporary eclipse. It remains true that all sides have been ready to make great concessions to attain union. They had learnt the trouble which came of preferring the interests of the part to those of the whole, and they were determined not to repeat the mistakes of the past. It was this spirit of tolerance, born of a profound conviction that the continuance of racial and inter-colonial struggles

would be fatal to South Africa, which led the Convention, although representing two races who for many years have opposed each other so bitterly, to display in their work a mutual trust far greater than that shown by the French in Canada or by the representatives of the different States, although of the same nationality, in the United States and Australia. Thus was achieved in a few months a work which, as Mr. Balfour said in the House of Commons, is without parallel in history.

# CHAPTER IV

## THE CONSTITUTION—GENERAL

In form, the draft Constitution is not unlike those of Canada and Australia, or even the United States; in spirit, the difference is profound. The three latter are federal constitutions. There are important differences between them, but they all conform to what Professor Dicey, in his work on *The Law of the Constitution*, has stated to be the three leading characteristics of federalism—the supremacy of the constitution, the distribution among bodies with limited and co-ordinate authority of the different powers of government, and the authority of the courts to act as the interpreters of the constitution. The South African Constitution possesses none of these characteristics. The Parliament of the Union, and not the Constitution, is supreme; power is not distributed among bodies with limited and co-ordinate authority, but resides ultimately in the Parliament; the Courts will have no more authority than they have in Great Britain to act as interpreters of the Constitution. It is from the principle of the supremacy of Parliament that flow all the fundamental differences between a federal constitution and a unitary constitution such as that framed for South Africa. The South African Parliament is not, it is true, supreme in the manner in which the British Parliament is

supreme, because it is subject to the limitations which the British Constitution imposes upon all Colonial parliaments, and further because in the case of certain sections of the Constitution its plenary power of amendment is qualified. But in fact and in essence within South Africa it is all-powerful. In the case of the British Constitution the supremacy of Parliament has been called by Professor Dicey 'the clue to guide the inquirer through the mazes of a perplexed topic'. It is no less the first principle of the South African Constitution. It is easy to establish the truth of this statement from the terms of the Act itself. In the first place, Parliament is expressly stated to have full power to make laws for the peace, order, and good government of South Africa. Again, any ordinance (as the legislative acts of the Provincial Councils are named) is valid so long and so far only as it is not repugnant to any Act of Parliament; and, finally, Parliament may amend the Constitution by a simple act of legislation just in the same way as it may amend any other law. There is, therefore, no such legal sanctity about the Constitution as there is in the cases of the United States, Canada, and Australia. Parliament's power of amendment is, however, qualified in two ways. Certain provisions relating particularly to the legislature cannot be amended at all for a definite, though short, period; certain other provisions, i.e. those relating to the native franchise in the Cape Colony, to the equal treat-

ment accorded to the English and Dutch languages, and to what are known as 'equal rights', can only be altered by a two-thirds majority of both Houses of Parliament sitting together, and in the case of still other provisions, including the sections providing for 'equal rights', and for the existence of provincial councils, every amending bill is reserved for the King's pleasure. The section of the Act, however, which defines the various methods of amending the Constitution can itself be amended by a similar majority of two-thirds. Legally, therefore, the only limitation on the complete power of Parliament over the Constitution is the requirement of a two-thirds majority in certain particular cases. If the South African Parliament, in the exercise of its legislative power, ignored this requirement, any law so passed, being in conflict with the Constitution, or, in other words, with an Imperial Act of Parliament, must be declared by the Courts to be null and void.

Professor Dicey has charged the framers of the British North America Act with 'diplomatic inaccuracy' because they asserted in its preamble that the Dominion is to possess 'a constitution similar in principle to that of the United Kingdom' Canadian critics, looking rather at the system of parliamentary government in force in Canada than at its essentially federal nature, have denied the justice of the charge. Whatever the merits of the controversy as applied to Canada, there is no doubt that the terms of the Canadian preamble

would have been entirely applicable to the South Africa Act.

In South Africa this fundamental principle of the supremacy of Parliament has in three colonies been greeted as the great achievement of the Act, and in the fourth has been condemned as a disastrous error. But, notwithstanding the hot opposition of critics in Natal, which the history and circumstances of that colony render natural, there is little doubt that opinion in South Africa is overwhelmingly in favour of the unitary as opposed to the federal principle. The panegyrics which American writers have been accustomed to lavish on the Constitution of the United States, and the imitation of that Constitution by Canada and Australia, probably explain the widespread opinion that federalism is a form of government to be sought as an end in itself, and not one which should be accepted only when nothing better can be obtained. But federalism is, after all, a *pis aller*, a concession to human weakness. Alexander Hamilton saw its dangers and only acquiesced because by no other means was union possible. In Canada Sir John MacDonald strongly favoured a legislative union, but was obliged to bow to the intense provincialism of Quebec. In Australia the narrow patriotism of the different states has imposed upon the Federal Government limitations which are generally admitted to be checking that country's advance. Federalism must be accepted where nothing better can be got, but its dis-

advantages are patent. It means division of power and consequent irritation and weakness in the organs of government, and it tends to stereotype and limit the development of a new country. South African statesmen have been wise to take advantage of the general sentiment in favour of a closer form of union. It is remarkable that South Africans should have succeeded where almost all other unions have failed, in subordinating local to national feeling, and that the people of each colony should have been ready to merge the identity of their state, of whose history and traditions they are in every case intensely proud, in a wider national union, which is still but a name to them. The truth, as has already been stated, is that bitter experience has taught them the evils of disunion. The lesson is confirmed for them by the difficulties in which Australian federalism is floundering. They agree with General Smuts in his emphatic expression of the immense advantages of a strong government, especially in a country faced, as South Africa is, with problems which may well appal the stoutest and most optimistic heart. The racial question between British and Dutch, the economic and social questions of capital against labour and town against country, administrative questions such as the elimination of animal diseases which nature has lavished on the country with such abundance, all require uniform treatment and firm handling. But all these are of minor importance when com-

pared with the black shadow of the native problem. 'The white people of South Africa,' as Lord Selborne has truly said, 'are committed to such a path as few nations have trod before them, and scarcely one trod with success.' The darkness which surrounds the future of the white and black races is impenetrable, and opinions as to the path which leads through to the light are as far apart as the poles. Men agree only in resolving that a great effort must soon be made to reach a common opinion, so that the united strength of the whole community, centred in one government, may be directed towards the solution of this great problem. Failing this, disaster awaits South Africa.

The supreme power given to the Parliament of the Union has been criticized in some quarters as excessive and dangerous to liberty. The criticism is not well founded. There is no more curious phenomenon in modern politics than the distrust of representative government which some forms of democracy have engendered. In the United States this feeling has gone to extreme lengths, and in the newest constitutions the legislature is hedged about by innumerable restrictions, and in some cases may not meet oftener than once in two years—surely a strange commentary on the power of public opinion to control the people's representatives under a form of government where responsibility is not centred in some one authority. The unfortunate experiences of the American democracy are probably due to the fundamental

error of all American constitutions in separating legislative from executive power. Where, as in British self-governing countries, there is no such separation, and where in consequence the executive and legislative authorities, the cabinets and parliaments, react upon and mutually control each other, both being subject in the long run to public opinion, no harm has come from trusting the legislature completely. In countries where the people are more accustomed to revolutions than to constitutional government, to grant complete freedom to the legislative body might be really dangerous. But both British and Dutch in South Africa are essentially law-abiding. What reason, indeed, is there to suppose that the Parliament of the Union will be more revolutionary than the parliaments of the colonies? According to the well-established practice of the British Constitution, these latter have always possessed full power to amend their own constitutions. That power they have never abused. They have now agreed to transfer it in its fullness and entirety to the Government of the Union. It is to be expected that the moral sanctions which were sufficient in the past will be sufficient in the future. Custom is at least as strong as law, and while the Constitution will certainly be amended, since it must harmonize with the rapid growth and changing circumstances of a young nation, every parliament will be in honour bound not to violate its spirit for any selfish ends.

But although ultimate authority is thus concentrated, instead of being distributed as in a federal system, the framers of the Constitution recognized the dangers of too great centralization. Indeed, the area to be governed is so large that the grant of some fairly wide powers of local government was essential. The problem was complicated first by the determination to abolish the existing colonial constitutions, a step which could not be avoided, and secondly by the absence in South Africa, except in the Cape Colony, of any indigenous system of local government. It was necessary, therefore, to create afresh within the provinces some new framework of government. The provincial constitutions thus framed give rise to several interesting questions which will be touched upon later. For immediate purposes reference need only be made to the matters upon which legislative power is delegated to the Provincial Councils. The list is to a large degree copied from the Canadian Constitution, but it covers less ground. The provinces may raise local taxation, provided it is direct, may borrow money with the consent of the Union Government, may legislate upon all such local matters as municipalities, hospitals, and local undertakings, and upon all other matters which the Central Government may consider to be of a local or private nature, or which Parliament may delegate to them. They have also legislative, and consequently administrative, power over education,

exclusive of higher education, for five years after union, and thereafter until Parliament decides otherwise, and over agriculture 'to the extent and subject to the conditions to be defined by Parliament'. There are evident signs of compromise in these arrangements. It is inconsistent, for instance, with the whole spirit of the Act that so important a subject as education, doubly important in a country where the language question raises such fierce controversies, should be left to the tender mercies of bodies which are generally expected to be the haven of mediocrity. It was earnestly to be hoped for the sake of future peace that the education question would have been treated upon broad and uniform lines. But this cannot now be expected. If the past may point a way to the future, the question will, at any rate in the Orange Free State, be handled in a spirit which will supply fuel to the fires of racialism. This concession to provincial feeling is limited, it is true, to five years, but those who obtained it must obviously hope that, once the provinces have enjoyed it, they will not lightly give it up. The future will show whether they are right. Meanwhile the provision is certainly one of the least satisfactory in the Constitution.

As to agriculture the terms of the Act are more ambiguous. Parliament may interpret it literally and keep much of the control in its own hands. Indeed, when the matters dealt with by the different agricultural departments are examined,

the importance of some central control in almost all cases becomes manifest. In the case of cattle disease, the greatest scourge of the country, and of locusts such control is indispensable. The negligence of one provincial government might otherwise render abortive the vigilance of the others. It is useless to destroy every swarm of locusts in the Transvaal if they are allowed to breed with impunity in the Cape Colony. Moreover, in questions of research and scientific work, which occupies so large a sphere in a modern agricultural department, it seems a useless waste to multiply laboratories throughout the country. It may, therefore, be anticipated that Parliament will show itself loth to part with any powers which it can with reason retain.

Compromise again is written large over the provision—surely a strange one—that the provinces may legislate upon 'all matters which in the opinion of the Governor-General-in-Council are of a merely local or private nature in the province'. There is probably no other instance in a British Constitution of a provision by means of which the legislative power of Parliament may be indefinitely diminished without any reference to Parliament itself. The Governor-General-in-Council may change his opinion from day to day; certainly from year to year. May he, therefore, withdraw a power he has once granted? Apparently he may treat any question, even the native question, as private and local, and no one may gainsay him. The provision

is a blot upon the Constitution. While, however, it may make constitutional lawyers shudder, its practical effect will probably be small. No government is likely to fly in the face of Parliament, and no Parliament is likely to acquiesce in a diminution of its authority. Moreover, if governments are found to abuse their discretionary power, Parliament can as a last resort amend the provision.

The brief survey given of the division of power between the Union and Provincial Governments is sufficient to show the immensely preponderating authority of the former. With the exception of education and agriculture, the Provincial Governments are restricted to purely local affairs, and their power even here is not exclusive. Indeed, Parliament may, with the consent of the Imperial Government, entirely abolish the Provinces. South African statesmen have thus proceeded on an entirely different plan from that followed either in America or Australia or Canada. In the two former countries the federal constitution was superimposed on the existing state constitutions, the latter remaining in force except where they were inconsistent with the federal constitution; only certain matters of national importance were transferred to the central government, the residual power remaining with the states. In Canada, on the other hand, the separation of Quebec from Ontario made it necessary to frame a new constitution for each of these provinces, but the remaining provincial constitutions were left in force except

in so far as they were repealed by the Constitution. An exhaustive division of power between the Central and Provincial Governments was attempted, the powers given to the latter being large and in their nature exclusive. In South Africa a bolder course has been pursued. Existing colonial constitutions are swept away, and the Act sets up a new framework of government, not only for the Union but for the provinces as well. Moreover, the Union takes over at once every important function of government, and there is none which legally it may not assume. On the appointed day all existing governments will disappear, to be replaced at first by a national government alone. A few months later the Provincial Governments will be formed. It is easy to realize, therefore, the immense responsibilities which will devolve upon the Union Government, and the boldness of an experiment which proposes wholly to demolish the existing framework of government over so vast an area. It is now necessary to see what are the organs of government which are to take its place.

# CHAPTER V

## THE EXECUTIVE

It is characteristic of South Africa that, contrary to Australian example, the portion of the Act dealing with the Executive should precede that which deals with Parliament. The power of Parliament over the Executive is probably not so great in practice in South Africa as in other parts of the British Empire. The causes are various. In the first place, except in the Cape Colony, there is no parliamentary tradition. It may be difficult now to foster. For even in Great Britain the decay of Parliament is noticeable, and everywhere parliaments seem to be failing to cope efficiently with the burdens imposed on them by the growth of state socialism, and the complexity of modern life.

Perhaps, however, the chief reason is the tendency of the Dutch to give their confidence to the government of the day. There is a strong feeling among them that it is disloyal to criticize the Government. They have not arrived at the stage of believing that it is the business of an opposition to oppose. Rather they look upon any such action as unpatriotic. Even immediately after the war many of them refrained, owing to this sentiment, from opposing the Crown Colony Government.

They argued, like the Duke of Wellington, that His Majesty's Government must be carried on.

A further consequence of this tendency is that if a leader has once proved himself he may reckon with confidence on the implicit trust of his followers. All this tends to place great power in the hands of the government of the day, certainly if it be a Dutch government. A good example of this is to be found in the very success of union. The entire lack of opposition to union among the Boers in the Transvaal and Orange River Colony is quite as much due to their faith in their leaders as to their liking for so revolutionary a change.

The provisions relating to the Executive require little comment. They do not depart from British precedent. There are to be not more than ten Ministers of State administering Departments of State, all of whom must be members of Parliament; but as these clauses have been interpreted in Australia, there seems nothing to prevent Ministers without portfolio being added to the Ministers of State to form the Cabinet. The Government is clothed with all the powers and authorities formerly vested in the governments of the Colonies, except such as are in the Act vested in some other authority, such as the administrator of a province. The executive will be installed in office before the election of Parliament.

In this chapter of the Act, also, Pretoria is fixed as the seat of government. This shows that its framers intended that 'Government' should here

denote merely Executive Government, and not Legislative Government also, Cape Town having been fixed as the seat of the latter.

The choice of a capital was bound to be a matter of extreme difficulty. There is nothing else which brings home so directly to the popular imagination the sacrifices which union entails. Where the results of a great political change are incalculable, men may believe that they will be great, and still be ready to trust the future. But here is a sacrifice of which there can be no doubt. The losses which may follow to individuals may be exaggerated, but the transference of the authority of government to a centre, perhaps hundreds of miles away, and the exaltation of a rival city are matters which come home to every citizen. Luckily, in South Africa there was no difficulty so great as the irreconcilable rivalry of the great Australian cities of Melbourne and Sydney. None the less, the obstacles to any settlement were formidable. Cape Town had always held that it possessed the prescriptive right to be the capital of a united South Africa, and until a few years ago it would have had the support of the mass of South African opinion. Indeed, until the meeting of the Convention the people of Cape Town had hardly conceived it possible that the capital should be elsewhere. Cape Town is the most ancient city of South Africa. It is the place at which its history begins. In 1508, Almeida, the Portuguese navigator, landed on the shores of Table Bay, only to

meet his death at the hands of the Hottentots; in 1652, Van Riebeek founded the first Dutch settlement, and established a port of call for ships bound for the east.

The struggles of the small community against man and beast are a fitting prelude to South Africa's strenuous history. The Hottentots were a dangerous enemy, and the old block-house, which was used to watch for their coming, still stands high on the slopes of Table Mountain. Wild beasts were numerous, and it is recorded that a man was actually carried off by a lion from the Castle. It was from Cape Town that the Dutch farmers ventured forth into the wilderness and began those wanderings which form the romance of their nation. Nor is its history its only claim. For the Cape peninsula is one of the most beautiful spots on earth, and its inhabitants may be excused for believing that no one who had come under the influence of its charm could wholly ignore its claims to be the capital. The great uplands and vast plains of the high veld have a fascination of their own, from which few escape. But to those who have been nurtured on England's sea-breezes there comes at times a longing for the sight and sounds of the sea. To one who has dwelt long in the dry and parched interior there can be few pleasures more intense than to stand on the glittering sands of Muizenburg, and to breathe the moist and refreshing wind blowing over the waters of False Bay straight from the South Pole.

As he gazes over the blue sea there rise before him on one side the majestic mountains of Hottentot's Holland, while on the other he sees the soft outline of the high hills above Simonstown, stretching down to the bay, until they end in the cliffs of the Cape of Good Hope. Behind him is spread the beautiful panorama of the peninsula itself, with its mountains and pleasant streams, its vineyards and forests, its splendid Dutch farmhouses and great avenues of oaks and firs, built and planted by the Dutch governors of old. Over all towers Table Mountain. For beauty and amenity of life the Cape peninsula is without a rival in South Africa.

Pretoria, the other chief claimant for the honour, has neither Cape Town's history nor its beauty. It is a pretty town nestling in the bosom of Magaliesberg, well wooded and well watered. But its streets are mean, and it is yet hardly more than an overgrown dorp. The inhabitants of Cape Town are thought by the population of the inland to be out of sympathy with the veld, but it is no less true that the people of Pretoria are apt to be parochial and selfish in their views. They find it difficult to look beyond the hills which surround them. In this respect they suffer by contrast with the population of Johannesburg. But Pretoria has this great advantage, that it is central in position, while Cape Town is at the extreme end of the continent. It is what Cape Town is not, a part of the true South Africa. The Cape

peninsula is a land of vineyards and streams, not of karroo, and kopje, and veld. Its climate even is quite different. South Africa is a land of summer rains and winter drought, but at Cape Town it is the winter that is the rainy season. Pretoria, too, is in close proximity to the great industrial centre of the country, and likely to be some day the seat of industry itself, for it is surrounded by vast deposits of coal and iron ore. But, while its nearness to the Rand is truly an advantage, the domination of Johannesburg is so much of a bogie to the rest of South Africa that this very fact was the chief obstacle to its success.

Johannesburg itself, though it possessed many advantages, was out of the running. There is a general fear throughout South Africa of the influence of the mining industry. This sentiment is largely the outcome of ignorance and prejudice, but whether ill or well-founded it was strong enough to make any idea of Johannesburg as the capital out of the question.

The only other possible rival among existing towns was Bloemfontein. It is central in position, but has nothing else to commend it. It is the most unattractive of South African capitals. If there was a danger of its being chosen, it was solely due to the difficulty of reconciling the conflicting claims of Cape Town and Pretoria.

The Convention might have determined to ignore all existing capitals and choose a new site on the Vaal River, or in some other favourable position.

But even had such a course been acceptable to the public, the expense of creating a new capital and the difficulties of conducting the government in the meantime were strong arguments against it.

The difficulties in the way of a settlement were therefore great. If either Cape Town or Pretoria gained the prize at the expense of the other, or if neither gained it at all, it was equally likely that union would be wrecked. When it became known that a deadlock had been reached, the newspapers advocated the Australian plan of leaving the matter to the decision of the future Parliament. But to this course many delegates had rightly the strongest objection. It possessed every disadvantage, and Australia was a warning of the probable consequences. Compromise was necessary, and in the art of compromise Afrikanders are past-masters. The spoil was divided. Pretoria cried out that it was betrayed, but its lamentations were unheeded, since most reasonable men thought it had got as much as it deserved.

This curious arrangement by which the executive government has its seat in Pretoria, while Parliament sits a thousand miles away at Cape Town, has its advantages and disadvantages. It must add to the expense of conducting the government, and it must tend to make efficiency more difficult. At the same time, in so large and varied a country as South Africa, there is something to be said in favour of bringing the government and the members of Parliament into contact with two

great centres, Pretoria and Cape Town, the one typifying the continental nature of the Union, the other its ultimate dependence on sea-power, a fact which it is all-important to bring home to South African legislators. And, while it is essential that the government should be in touch with the great inland districts, it may be fortunate that Parliament will meet in a city where political traditions are more settled and perhaps sounder than in the youthful north. Lord Curzon has pointed to the example of Simla and Calcutta as a proof that the compromise is quite workable. While one may be inclined to doubt the aptness of a parallel drawn from such widely differing conditions, there need be no insuperable difficulty in carrying on the government efficiently. It is merely a question of organization. The compromise may last for years, and in any case it is useless to attempt to probe the future. All that may be said with safety is that, whatever direction South Africa's development may take, Cape Town will never be its centre of gravity.

# CHAPTER VI

## THE LEGISLATURE

The Legislature is to consist as usual of two Houses—a Senate and a House of Assembly. But although to this extent the Act follows precedent—not, we have been told by some delegates, without opposition—it has several novel features. In the first place the constitution of the two Houses of Parliament is for the first few years of their existence even more federal in character than that of the corresponding Houses in federally governed countries. In the latter it is the rule that while the Upper House represents the principle of state rights, the Lower is elected by the whole population without respect to state boundaries. In South Africa both Houses of Parliament will for the first period of their existence be constituted on what may be termed a provincial basis. It was found necessary to make large concessions to provincial feeling in order to secure the acceptance of a constitution unitary in its nature although apparently federal in some of its aspects.

The constitution of the Senate is somewhat complex. It is to consist of eight members nominated by the Governor-General-in-Council, four of whom must be well versed in native affairs, and, in addition to these, of eight elected for each province. Thus, except in the case of the nominated members, the principle of equal

representation among the provinces, common to strictly federal constitutions, is followed. This principle is secured for ten years; thereafter it is retained only until Parliament decides to make other arrangements. The nominated members will, it is hoped, add to the strength of the Senate, by including men prominent in the life of the nation who would otherwise be lost to politics. The elected members of the first Senate are chosen in a novel manner. The two Houses of the present colonial Legislatures, which will disappear with union, are before that date to meet together and elect the eight senators for their province. These senators hold their seats for ten years, and vacancies among them are filled by election by the Provincial Councils. If at the end of ten years no other provision has been made by Parliament, the elected senators will be chosen jointly by the members of the Provincial Council and the members of the House of Assembly representing the province concerned, and any vacancy will be filled in a similar manner. It will be seen, therefore, that there are actually four methods of choosing senators—nomination by the Governor-General-in-Council, election by the present Houses of Parliament, election by the Provincial Councils, and election jointly by the Provincial Councils and certain members of the House of Assembly. All this complexity does not appear to be very satisfactory. The election of senators is to be by means of proportional representation, and it

is probable, therefore, that the complexion of the existing Parliaments will be reflected in the first Senate. In other words, the existing majorities will perpetuate themselves in it for a period of ten years, since during that period the Senate cannot be dissolved. Thus the method of constituting the first Senate appears to be favourable to the parties now in power and correspondingly unfair to the minorities.

The delegates who were sent to England from the different colonies were entrusted with the task of framing regulations for the election of senators by proportional representation. The rules which they drew up have now been published in South Africa. They are an adaptation of the system of the single transferable vote, which is advocated by the English Proportional Representation Society. The delegates had before them the Act in force in Tasmania, and also the Municipal Representation Bill introduced by Lord Courtney into the House of Lords in 1907 and passed. The regulations for the election of senators are to a large extent founded on the rules contained in those Acts, but it was found necessary to modify them in some important respects. It is not so simple to apply the system of the single transferable vote to quite a small election, where the electors number less than one hundred, as it is to a large election. The modifications are therefore in the direction of securing absolute accuracy in the result.

Critics of proportional representation will no doubt complain of the complication of the rules.

For the voter, however, the system is simplicity itself. The Returning Officer must, it is true, make himself acquainted with the rules for counting and transferring the votes, but if he is a man of ordinary intelligence he should have no difficulty. It is fair also to remind critics that it is only by means of proportional representation that the Senate has been able to be constituted as it is. There is no other known way by which senators can be elected, and yet each party be represented according to its strength. The abandonment of proportional representation would, in fact, have meant that the whole constitution of the Senate must be entirely recast.

Nothing seems more difficult in constitution-making than the composition of an Upper House. The Convention might have followed Canada and adopted nomination pure and simple, or Australia and caused the Senate to be elected directly by the people. There were arguments against both courses. Nomination has been shown in Canada to possess many objectionable features. It gives too much power to the Government of the day, and the patronage which it places in its hands may be used in a form in which it is hardly to be distinguished from bribery. Sir Wilfrid Laurier has himself dwelt on the evils of nomination and advocates rather the plan adopted in the United States of election by the State legislatures.

The objection to direct election by the people was that the Senate might then become a dangerous

rival to the Lower House. If Senators were elected in the same districts and by the same electors, might they not claim to be as representative of the people as members of the Lower House ? The Australian constitution attempts to impart a different complexion to the Upper House by making each state a single electoral area for the election of Senators. But as Senators are elected by 'general ticket', a system which gives each voter as many votes as there are seats to be filled, the result is that the party in the majority in any state can sweep the board. In most states the Labour party has been in the past better organized than its rivals, and the Senate in consequence has been said to be more like a National Labour Convention than an Upper House. The Chamber, which is usually supposed to act as a drag on revolutionary legislation has largely occupied itself in passing academic resolutions in favour of the nationalization of all means employed in the production and distribution of wealth and other projects of a socialistic character.

The South African constitution entirely eschews direct election for the Senate. It is rather a compound of the principles of the Canadian and American constitutions. Its provisions in this respect might have been simpler without losing any of their virtues, but it is quite possible that in practice they may be satisfactory.

It has been shown that equality of representation in the Senate among the provinces is safeguarded

in the Constitution only for ten years. Those who insisted on this limitation doubtless hoped that provincial feeling would have so far given way to national feeling that it might be possible at the end of that time to make a nearer approach to the unitary principle. But prophecy on such a matter is dangerous. Threatened institutions live long, and the Senate has first to be got to agree to its own reconstruction.

In the composition of the House of Assembly the same principle of provincial representation is observed. The members are not distributed on a uniform basis throughout the Union, but a certain arbitrary number is allotted to each province. The ultimate basis on which the allocation rests is the number of the European male adults in each province. But the Cape and Transvaal have both taken a smaller representation than they are strictly entitled to, in order to allow a larger representation to the two smaller provinces of Natal and the Orange Free State. No province can have its representation reduced until the number of members of the House reaches 150 or until the expiration of ten years after the establishment of union, whichever is the longer. In this way the separate identity of the provinces is recognized, the vote of a Natal citizen, for instance, simply by virtue of his residence in Natal, being of much more value than the vote of a citizen of the Cape Colony or the Transvaal. Complicated and ingenious provisions determine the increased

representation to be allotted to any province in the case of an increase in its white population. The process goes on until the number of members of the House reaches 150. The number of members is then to remain at 150, and they are to be distributed without reference to provincial boundaries, so that throughout the Union the proportion of European male adults to each member may be as far as possible the same in each province. Thus it is contemplated, as in the case of the Senate, that after a short and limited period of time the constitution of the Assembly will be framed on a national instead of a provincial basis.

Although an arbitrary number is adopted for the representation of each province as such, the distribution within the provinces of members so allotted follows a definite principle. Members will be distributed in electoral divisions based on the number of registered voters in each, and each member will, so far as possible, represent an equal number of votes. Each electoral division is to return one member. Constituencies are to be delimited by a commission of judges and the commission may depart from the strict quota to the extent of 15 per cent., either above or below, if they think it necessary owing to the sparsity or density of the population, or for other reasons. An automatic redivision of the constituencies by a commission of three judges is to take place after every quinquennial census.

By these provisions the question of 'equal

rights' is once and for all settled in the Constitution in a manner satisfactory to the British population. But, as the world knows, it was on this rock that the ship of union was almost wrecked. In the Cape Colony the country population have always had a decided advantage over the towns, two voters in the country being equal in voting value to three in the towns. The Progressive party in the Cape have always talked of drastic redistribution, but every one knew that a reform so sweeping as that now embodied in the Constitution had no chance whatever of passing the Cape Parliament as a local measure. Not only were the Bond strenuously opposed to any change which would weaken their party, but the Progressive farmers also looked askance at increasing the political power of the towns. Thus the knowledge that the Cape delegates had been induced not only to agree to equality of representation between town and country, but to adopt a system of proportional representation which might have the effect of diminishing the overwhelming power of the Bond in the country districts, came as a shock to the politicians of that party. To the rank and file of the Bond, who were no doubt prepared to look at the matter in a broader light than the party wire-pullers, the change was also distasteful for the reason that proportional representation meant, especially in the Cape Colony, very large electoral areas. The farmers on both sides were naturally afraid of increasing the cost of elections and the

difficulties of canvassing. An organized attack was accordingly made on these two points. Lurid pictures were placed before the Bond members of Parliament of the disastrous effect of these provisions on the party's fortunes, with the result that when the Cape Parliament met to consider the draft constitution the Prime Minister and the other delegates on the Government side were compelled to throw over the compact arrived at by the Convention and to vote for amendments involving its entire abandonment. Thus a most critical situation was created. It was impossible that the Transvaal Progressives should give way upon the principle of 'equal rights' They had with the utmost reluctance consented at Cape Town to include denseness or sparseness of population among the reasons of which the Commissioners might take account in differentiating between area and area. This provision already meant that a thinly populated country area might number 30 per cent. less voters than an urban area. Beyond this concession they could not go. The fate of union rested in the hands of General Botha and his colleagues, since the Cape delegates could not hope to carry their amendments through against the Transvaal Government. That Government remained firm to their honourable compact with the Progressives, and a compromise was finally reached by which the retention of the 'equal rights' clauses as they stood was balanced against the abandonment of proportional repre-

sentation for the election of the House of Assembly and the Provincial Councils. The question, therefore, of equal voting power for all sections of the community, which led to the war, which has been for years a subject of party strife in the Cape, and which after the war formed the main bone of contention between the opposing parties in the Transvaal, is now settled, let us hope, for ever.

Those who had advocated proportional representation had seen in it a valuable means of softening racial antagonisms. It is unfortunate that the British minority scattered throughout the country districts, and to a less extent the Dutch minority in the towns, will now be deprived of all hope of proper representation. As before, and particularly in the Transvaal and Orange Free State, the towns will return British members and the country Dutch. The line between town and country is in itself too strongly marked; it is intensified by race prejudice. Proportional representation might gradually have broken down these barriers with the most fortunate results to the country. To those who held this view the compromise was most distasteful. It was accepted only as the price of union. The Transvaal Government have since vindicated their faith in proportional representation by applying it to the election of the town councillors of Johannesburg and Pretoria. These elections take place almost immediately, and the results of the experiment will be watched with interest.

In South Africa, as in Canada, one important question has been left to the future. No attempt has been made to establish a uniform franchise throughout the Union. It is a task of the most serious difficulty, and as the Convention's object was to build the framework of a national government, not to settle all the problems of the country, it was wise in deciding to let alone a matter any settlement of which would have wrecked the whole scheme. It was impossible to extend the coloured franchise of the Cape Colony to the rest of the Union. It was equally impossible to extend the manhood suffrage of the Transvaal to the Cape Colony. It was impossible to deprive the Cape coloured voters of the rights which they now possess. It was therefore decided to maintain the present laws, to safeguard by special means the native franchise where it now exists, and to leave the whole question to be dealt with by the Union Parliament. The violent criticism with which even this compromise has been received, on the one side by the coloured voters and by their friends in the Cape Colony, and on the other by the extreme opponents in the northern colonies of the grant of any franchise rights to coloured persons, is sufficient evidence that South Africa is not yet ripe for a settlement of this difficult question, and that any attempt to settle it would have led to disaster.

It has already been shown that the South African Constitution avoids one difficulty which may yet cause trouble in Australia. There will

be no doubt which is the predominant House of Parliament. The ordinary British system of Cabinet Government, which the Constitution presupposes, requires for its proper working that the Government should be fully responsible to one House only. An adverse vote in the Senate should no more than an adverse vote in the House of Lords involve the Government's resignation. The secondary election of the senators will prevent them from laying claim to represent the people with the same directness as the Assembly. If any deadlock arises between the two Houses the solution is provided by a deadlock clause generally similar to the Australian clause. If there is any conflict the Governor can order a joint sitting in the next session after that in which the trouble arose, and the majority in such a sitting determines the result. There is, however, an innovation to the effect that in the case of a money bill the senate may, to use a local expression, be 'steam-rollered' in the same session in which the quarrel arises and not in the ensuing session as in Australia. Thus the Assembly's predominance over the Senate will be undoubted. The Senate will be reduced to the position of a house of review, and a place where ministers may make graceful concessions which they have refused elsewhere.

# CHAPTER VII

## PROVINCIAL CONSTITUTIONS

The details of the Provincial Constitutions have been received by the public in South Africa with indifference rather than with commendation or criticism. Indeed, this part of the Act has been treated as so much of an experiment that it is generally assumed that in the near future much of it will require to be altered, and that therefore it is hardly worth while wasting time and trouble in any detailed consideration of it. But this is a short-sighted view. Institutions when once they have been brought into being have a knack of refusing to disappear. Problems will undoubtedly arise—some of them will be referred to later—but there is no valid reason for supposing that the difficulties in the scheme formulated by the Convention are so grave as to make it unworkable. Indeed, a great deal of care and trouble appears to have been spent in devising these constitutions; and an examination of them is well worth the while of the political student.

Each Provincial Constitution has three main organs. There is an administrator appointed and paid by the Union Government, a Provincial Council elected by the same electors as the House of Assembly and consisting of the same number of members as represent the province in the Assembly

(no Provincial Council, however, having less than twenty-five members) and an executive committee consisting of the administrator and four members elected by the Provincial Council. The members of the Executive Committee need not necessarily be members of the Provincial Council. The administrator is appointed for five years. Both the Provincial Council and the executive committee sit for three years, the executive committee remaining in office until a fresh committee is elected by the new Provincial Council. The Provincial Council cannot be dissolved nor is there any authority which can dismiss the executive committee. The executive committee is to be elected by proportional voting and is therefore certain to contain in almost every instance representatives of the chief opposing parties.

It is worth while to consider a little more closely the functions of these three organs of government. The administrator's functions are various. In the first place there are what may be called his ornamental functions. He is stated to be the chief executive officer of the province. He will no doubt represent the province on all ceremonial occasions. He has in addition certain functions similar to those of a governor of a self-governing colony. He determines when Parliament shall meet ; no money can be issued without his warrant and no appropriation ordinance introduced unless recommended by him. In other respects he is simply a member of the executive committee.

He is its chairman but with the exception of possessing a casting vote in addition to his ordinary vote, he has no more power than any other member of the executive committee. In ordinary times, therefore, it is probable that his power will depend on his ability and his personal influence. If he is a man of force and character, and if the other members of the executive committee are divided in their opinions, he may hold the balance of power and by this means exercise great influence. If, on the other hand, he is distasteful to the people of the province, it appears likely that the other members of the committee will be able to reduce him to the position of a constitutional governor. It is conceivable that a development might take place somewhat similar to that which led to the rise of cabinet government in England. The elected members of the executive committee might meet together and decide all questions of policy informally, meeting again later in formal committee for the purpose of obtaining the assent of the chairman. There is nothing, indeed, to make even the presence of the administrator necessary for the exercise by the committee of its powers. It must be remembered also that the administrator will start with an initial handicap. He will be a nominated official, and those who have any experience of Crown Colony government in a country like South Africa will recognize what that means.

In certain contingencies, on the other hand, the

administrator is clothed with exceptional powers. In the interim before union is fully established and before the Provincial Councils have been brought into being, the administrator has full power to administer the affairs of the province alone. This period of dictatorship will, however, be short. But there is another occasion on which he assumes almost autocratic powers. Whenever for any reason the executive committee has not a quorum the administrator has power to carry on the administration of provincial affairs until a quorum is re-established. He need not, apparently, even consult any members of his executive committee who are still left.

Another point worth noting is that the administrator will serve in a two-fold capacity. He is first a servant of the Provincial Council, but he is also a servant of the Union Government; and it is expressly provided that if the Union Government acting within its powers conveys instructions to the administrator he may carry out those instructions without reference to the other members of the executive committee. But there is no hint in the Act what powers the administrator is likely to be called upon to perform for the Union Government. They must obviously be left to be determined as experience dictates since they involve the whole question of the organization of government. The importance or otherwise of the position of the administrator will largely depend on the nature of the settlement arrived at. The

probable relations of the administrator to the Union Government form, indeed, an interesting speculation. His term of office, for instance, need not, and generally will not, coincide with the possession of power by the party which appointed him. Having been appointed by one party he may be called upon to serve another. It is quite possible that when party feeling is high he may find his position extremely difficult.

The administrator could have been omitted from the scheme of the Provincial Constitutions without altering their essential character and possibly with advantage to it. There is no counterpart to him in any British Constitution. He bears an analogy to the 'superintendent' who existed in New Zealand in the fifties. He is certainly opposed to the spirit of British institutions and it is possible that he may share the fate of the superintendents and disappear after a brief existence.

The executive committee consists of the administrator and four members elected by the Provincial Council. In the first published draft the elected members might vary in number between three and five. It was feared by Natal that in a committee of three an administrator with both an ordinary and a casting vote might exercise a dominating influence, and to meet this criticism the number was made four in every case; a number which is either too large for Natal and the Free State or too small for Cape Colony and the Transvaal.

The committee will contain representatives of more than one party. Party government, therefore, in the ordinary sense will be impossible. The Provincial Constitutions, indeed, presuppose a form of government entirely different from that to which Englishmen are used either in national or local politics. They seem to be based rather on the model of the Swiss Constitution to which many of their features are strikingly similar. Their creators no doubt hope that the results will be equally successful. The outstanding feature of the Swiss form of government is that, although political parties exist, party government does not. As Professor Dicey observes, the Federal Council, i. e. the governing body, is in reality not a cabinet but a board for the management of business analogous to a company's board of directors. Representatives of various parties sit upon it, and as Professor Lowell has pointed out, its members hold very divergent views. Nevertheless, the Council conducts its business with admirable efficiency and harmony, and possesses 'a stability, a freedom from sudden changes of policy, and a permanence of tenure on the part of capable administrators, which can never be attained under the parliamentary system'. A form of government may work well in Switzerland and still be entirely unsuited to a British community, but an experiment so successful in one country is at least worth a trial. These Provincial Constitutions have, moreover, been advocated on the ground that they

are not unlike the pre-war constitutions of the South African Republic and Orange Free State, and that these latter were found to be well suited to Dutch ideas of government. But this analogy cannot be pressed too far. These republican constitutions were only suited to a comparatively simple community. In theory they made the legislature supreme; in practice their efficacy depended on the ability and personality of the president. President Kruger was an autocrat and his reign would no doubt have been as successful as President Brand's in the Free State had not the Witwatersrand brought with it problems which the old form of government could not solve. The president was powerful because he was the chosen of the people; the administrator on the other hand will be nominated, and even if one admits that the republican constitutions were well suited to a homogeneous society, it needs imagination to predict what might have happened had two Uitlanders sat at President Kruger's Executive Council Board.

Those on the other hand who dislike so great a departure from British traditions maintain that the experiment must fail. They point out that no provision is made for avoiding deadlocks between the committee and the Council, since the committee cannot be dismissed and the Council cannot be dissolved. In practice, however, no great difficulties need be anticipated on this score. The committee cannot legally disobey the ordin-

ances of the Council and the Council in the long run will be able to force the resignation of the committee by cutting off its supplies. The latter is indeed likely as in Switzerland to limit its functions to carrying out the policy of the Council. A more serious criticism is that to attempt to force opposing parties to work together in the same Government, will be to try to mix oil and water. But before the Provincial Constitutions are condemned on this score the powers which they will be called upon to exercise should be examined. With the exception of education there are none of a character into which party politics need enter. Nor, indeed, are the independent powers of the provinces likely to be extended. One may venture to prophesy that in all likelihood they will be diminished. What is wanted in South Africa at its present stage of development is legislative centralization and administrative decentralization. Economy in administration is essential. Unfortunately even with the limited provincial powers the existence of two co-ordinate authorities will make it difficult to secure. Examples of probable difficulties are easy to find. The South African system of government is not unlike that of India. The country is divided into magistracies and at the head of each district is a magistrate who is the general representative of the Government. His duties will in future be undertaken partly for the Provincial and partly for the Union Govern-

ment. Are there to be two parallel systems of local government in the future or can the magistrate serve two masters, both Union and Provincial Governments? Again, some public works such as roads and bridges and schools will be under the administration of the provinces; the remainder will belong to the Union. Are there to be two Public Works Departments where one is now sufficient? The following is again another kind of difficulty which will probably arise. Public health, which must be administered by local bodies, is a matter for the Union. Municipalities and local bodies are under the Provincial Government. The municipalities will thus also serve two masters. They will be responsible for public health to the Union Government; for everything else to the Provincial Government. The truth seems to be that a half-way house between the thorough-going federal and the purely unitary form of government is not easy to find. No doubt the curious mixture of the South Africa Act was accepted as being the nearest approach to unification which it was possible to attain. It may, therefore, be that the Union Government will have either to absorb the independent power of the provinces, devolving, however, administrative powers upon them to whatever extent is necessary after the fashion of English local government, or sink back into the position of a federal authority. As the South African Constitution-makers have put all the

cards in the hands of the Union Government the former alternative is the more likely.

The provincial constitutions are therefore admittedly experimental, and at this stage it is impossible to predict their success or failure. The result will largely depend upon the spirit in which they are worked. Sound local government will be hampered by the great size of some of the areas, particularly Cape Colony, which is undoubtedly too large for the purpose, and for this reason it is somewhat unfortunate that a province may not be divided into two or more provinces without a petition from its provincial council. That body is likely to be the last to see the necessity for such a step.

Those who criticize the ready-made character of these constitutions should be prepared with an alternative. The only possible one would appear to have been the creation of small responsible governments throughout South Africa, engaged mainly in the administration of purely local affairs, with all the paraphernalia of lieutenant-governors, cabinets, dissolutions, and party government. It is probable that the Convention was right in rejecting such a plan.

Finally, it may be noted that the control of the Union Government over the provinces is not limited merely to the legislative supremacy of Parliament. For in addition all provincial ordinances must receive the assent of the Governor-General-in-Council, and still more important, the

financial control of the Union Government over the provinces, as explained in Chapter IX, is complete.

It is convenient to refer here to the provision that new territories and provinces may be included in the Union on such terms as the South African Parliament may determine. Apart from the native protectorates, which are dealt with specially in Chapter X, there remains only Rhodesia, though it is conceivable that British Central Africa may some day be taken over, and, in the far distant future, even British East Africa and Uganda. Rhodesia must undoubtedly be included in the Union, but it is an open question whether any steps to that end should be taken in the immediate future. The people of Rhodesia are said generally to be averse from the prospect. The new South African Government will be overwhelmed with work, and are likely to neglect the interests of a part of the Union so distant, at the moment so comparatively unimportant and possessed of so little voting power. The administration of the Chartered Company has been good. A country so immature, and yet of such great possibilities, demands close attention from its responsible rulers. The steps which are taken in the next few years towards developing its resources and settling an energetic and progressive population on the land will go far to determine its future. Both in the interests of the Rhodesian population and of the South African Government,

it is therefore desirable to delay the inclusion of Rhodesia in the Union. That Government should first settle the more immediate problems which face it elsewhere. When that has been done, and when Rhodesia itself is more ripe for the change, it will be time for the Imperial Government to consider on what lines and under what safeguards the transfer of the administration should be made.

## CHAPTER VIII

### THE JUDICATURE

The provisions of the Act with regard to the judiciary require little comment. A Supreme Court of South Africa is constituted, and when the spoils were divided, the Supreme Court was given to Bloemfontein. Its sittings must be held there, though for the convenience of suitors it may go elsewhere. Bloemfontein is not a very attractive place and since judges are only human they may find that the convenience of suitors often requires their presence at Cape Town and other more pleasant places of abode. The Supreme Court is to sit in an appellate division and in provincial and local divisions; the existing supreme courts of the colonies become the provincial divisions, and the existing district and circuit courts become the local divisions. Appeals from any superior court will go direct to the appellate division. Appeals from the Supreme Court to the Privy Council are limited to cases in which the Privy Council may give leave to appeal. As in Australia, Parliament may limit the matters in which such leave may be asked, but laws imposing such restrictions are to be reserved for the pleasure of the Crown. The question which gave so much trouble in the Australian Constitution with regard to the inter-

pretation of the Constitution does not arise in the case of South Africa. The interpretation of a federal constitution is a matter of immense importance. It may, and in fact probably will, determine the whole course of the political life of the country, but, where parliament is supreme, the courts cease to be the guardians of the constitution, and, since any judicial interpretation which may be considered detrimental to the country's interest may be upset by means of an ordinary law, there is no reason to enter any special safeguards in this respect. The main benefit to be expected from this chapter of the Act is the removal of the present anomaly by which four Supreme Courts sit in South Africa, none of them bound by the other's decisions and occasionally delivering inconsistent and even contradictory judgements.

# CHAPTER IX

## FINANCE AND RAILWAYS

The chapter dealing with finance and railways is not only one of the most important of the whole Act, but is also perhaps the most logical and complete. It is here that the unitary principle finds its most complete fulfilment. There is no attempt rigidly to define once and for all in a written document the financial relations between the central and local governments. A cut and dried financial scheme, which is a necessary consequence of the adoption of the federal system, has been found in all federal countries to be a most serious drawback. Whether in America, or Canada, or Australia, the financial relations between the central and local governments are unsatisfactory. There is no sphere of government where elasticity and freedom are more necessary than in that of finance, and the difficulty of making those readjustments which the changing circumstances of a country's development require may often be found to be a serious handicap to its prosperity. The South African Constitution meets this difficulty simply and effectively by leaving the whole matter to be determined by the Union Parliament in the manner which the future may show to be the best. It does not set up a ready-made system ; it merely indicates the procedure to be followed temporarily

until Parliament has had time and opportunity to deal fully with the whole matter. All revenues (apart from revenues arising from the administration of railways and harbours, which are dealt with separately) are paid into the Treasury of the Union. All properties and rights belonging to the governments of the colonies which enter the Union, including even property incidental to the duties cast upon the Provincial Governments, are taken over by the Union Government, and all their debts and liabilities assumed by it. The Provincial Governments will, for the time being, depend on grants from the Treasury of the Union, except in so far as they may exercise their power of imposing direct taxation, which they will be in no hurry to do, if we may judge from the example of Canada. As soon as the Union is established a commission is to be appointed, consisting of one representative from each province, and presided over by an officer from the imperial service, to report upon the financial relations which should exist between the Union and the provinces. Until this commission has reported and Parliament has acted upon its report, the Provincial Governments will be entirely dependent upon the Union Treasury. For the expenditure of any grants they will be completely responsible to the Union Government; their estimates must be approved by that Government; and their expenditure will be audited by its officers.

All government centres in finance. There is

no doubt that the Convention, whether deliberately or not, has by means of the financial provisions of the Constitution sealed the authority of the Union Government over the provinces. They are held in a vice and the former has simply to turn the screw in order to secure its ends.

The elaborate provisions with regard to the administration of the railways and harbours of the Union, which are without parallel in any other British Constitution, are a good indication of the immense importance of the administrative side of a modern state. They point equally to the dangers which experience has shown to arise when a government becomes responsible for the administration of commercial undertakings. The peculiar evils to which the state administration of railways is subject are fairly well known both in Australia and South Africa. They are probably less appreciated in England. In Australia political interference and jobbery became so rampant that in the attempt to stem them drastic changes in railway management were found necessary. The railways were placed under the control of independent commissioners, relieved as far as possible from the pressure of political interference. This system of management is no doubt not perfect, but it has spread throughout the Australian colonies, and once tried has not been abandoned. Responsible Australian statesmen who have had experience both of the former system and of the system of management by commissioners have no hesitation

in expressing their decided preference for the latter. In South Africa the evils of political interference have not been so glaring, but they have not been absent, and under the ordinary system of ministerial control they are likely to increase in the future. A single idea—the prevention of political jobbery and the administration of the railways and harbours, so far as is possible for a government undertaking, on commercial principles—runs through all the railway provisions of the constitution. It is an attempt, much in the same way as the provision in the schedule that the native protectorates shall be administered by a commission, to save democracy from itself. In the first place the railways are to be managed, subject to the authority of the Governor-General-in-Council, by a board consisting of not more than three commissioners to be appointed by the Union Government and by a minister who is to be chairman. The commissioners are protected by being appointed for a period of five years and by not being subject to removal before the expiration of that period except by the Governor-General-in-Council for cause assigned, which is to be communicated at once to both Houses of Parliament. Their salaries are not to be reduced during their term of office. The success or otherwise of this board will depend on the class of men appointed as commissioners. The management of a railway system of many thousands of miles is a vast undertaking requiring special knowledge and capacity for organization,

and if the posts are to be the perquisites of politicians without any particular qualifications, the scheme will fail. All revenue from the railways and harbours is to go into a separate fund, and is to be used only for the purposes of the railways, ports, and harbours. Their earnings are not to be more than sufficient to meet the necessary outlays which must be incurred in their proper administration, and they are to be administered, as the Constitution quaintly says, 'on business principles, due regard being had to agricultural and industrial development within the Union, and the promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union.'

A curious commentary upon these provisions, and an indication of the great importance of the railway question, is the reference in the Constitution to the division of the traffic to the Rand (Section 148 (2)). In a previous chapter the difficulties arising out of this question have been referred to. Some time before the Convention, the Transvaal Government had commenced negotiations with the Portuguese authorities for the conclusion of a new treaty to take the place of the temporary *modus vivendi* of 1901; but as the questions dealt with intimately affected the other colonies, nothing was settled until there had been an opportunity of consulting them during the Convention. It was an open question, whether it was to the

interest of any colony that a new treaty should be concluded at all with the Portuguese, or whether a South African government, negotiating with the full force of a united South African opinion behind it, might not have been in a position to secure better terms.

But apart from certain reasons which made the Transvaal Government anxious to conclude a treaty, that step was rendered inevitable by the insistence of the Natal Government on a fixed proportion of 30 per cent. of the Rand traffic for Durban. So long as the *modus vivendi* was in existence, no such guarantee could be given to Natal without a breach of faith with the Portuguese, and when an agreement between the colonies was concluded at Cape Town in February (the agreement referred to in Section 148), by which 30 per cent. of the traffic was secured to Durban and 20 per cent. to the Cape ports, a new treaty was inevitable. Negotiations were accordingly completed by the Transvaal and Portuguese Governments, by which the Portuguese continued to grant facilities for the recruitment of native labour, and Delagoa Bay was secured for ten years in the possession of that portion of the railway traffic not divided between the Cape Colony and Natal. The publication of the treaty, however, led to a storm of protests throughout South Africa, and particularly in Natal. At one moment it looked as if the Union itself was jeopardized. Natal opinion was intensely suspicious, and at

the same time ill-informed. All sorts of dangers to Natal's prosperity were imagined, which had no foundation in fact. But on reflection it was recognized that the evils of the treaty had been exaggerated, and that, however distasteful it was, it had been rendered inevitable by Natal's determination not to enter the Union without a guarantee of traffic. It was clear too that Durban would in any case be better off than it is now. None the less, although the best may have been made of an unsatisfactory business, the arrangement by which the whole traffic is divided in certain fixed proportions between the ports is obviously not conceived on 'business principles', and will be difficult to work.

The Constitution provides elaborately that if the Board of Commissioners is compelled by Parliament to build unremunerative new lines, or to grant unremunerative concessions, the loss involved is not to fall on the railways, but is to be met by grants to the railways by the Government. These safeguards were prompted by some discreditable incidents in past railway history, particularly in the Cape Colony. Finally, the railway staff is to be under the sole control of the Board, and is not subject to review by the commission which is to report upon the remainder of the public service.

It is manifest that the intention of all these clauses is to separate so far as possible the administration of the railways from the remaining func-

tions of government. The inland colonies have, in the past, suffered from the imposition of high railway rates by the coast colonies, and the railways have always been used very largely as instruments of taxation. In the future all this will be impossible. The railways are to be worked at cost, and if it happens that any surplus remains that surplus cannot go to meet non-railway expenditure by the Government, but is secured to the railways for their own purposes. The policy here laid down is in marked contrast to that of other countries owning state railways, e.g. Prussia, which raises immense sums by means of railway rates for the ordinary purposes of government. But in a country of vast area, depending largely on imported articles, taxation through the railways is obviously unfair to the dweller in the inland, and the policy of the past has been most unpopular in the Transvaal. It was for this reason that General Smuts, much to the indignation of the coast towns, designated these clauses as the Magna Charta of the interior.

# CHAPTER X

## THE NATIVES

There was no part of the Constitution which the Imperial Parliament was bound to scrutinize with more care, or with which it was more certain that it could not interfere, than that relating to natives. The parliamentary debates at Westminster were indeed practically confined to this aspect of the bill. Many speakers, anxious to vindicate the ancient claim of Parliament to act as the protector of the inferior races throughout the British possessions, resented the imputation that Parliament might disapprove, but could not amend. But they failed to appreciate that new conditions had arisen. Old wine will not go into new bottles. To most speakers the true nature of the problem before them was not clear. It may, therefore, be useful to anticipate reference to the provisions of the Constitution itself by an attempt to elucidate the position of the Imperial Parliament towards South Africa in this matter.

In order to avoid confusion, it is well to explain in what sense the terms 'coloured men' and 'natives' are used in South Africa. A 'coloured man' is not a Kaffir. He is a person of mixed white and black blood. 'Coloured men' vary in colour between all the shades which are not quite white or quite black. They are numerous only

in the Cape Colony, and particularly in the environs of Cape Town. The majority of them are the product of a cross not between Europeans and Kaffirs, but between Europeans and the former slaves or Hottentots or Malays. In this chapter, therefore, it is necessary to distinguish between pure-blooded Kaffirs and persons of mixed blood. The term 'coloured men' will be used for the latter. On the other hand, the terms 'natives', 'black men,' and 'coloured races,' will, for purposes of convenience, include 'coloured men' as well as Kaffirs, unless it is otherwise stated.

Mr. Balfour truly said that the relations between the races of European descent and the dark races of Africa present a problem of the most extraordinary difficulty and complexity, one entirely novel in history, and to which there is no parallel in the memory and experience of mankind. He might have added with equal truth that it is in South Africa that the problem reaches the zenith of its difficulty and complexity. For in the United States, formidable as the problem is, the position of the white man is at least secure. The white population vastly outnumbers the blacks. In the West Indies, on the other hand, the white population hardly claims or hopes to be more than a garrison. But in South Africa the white man, faced by tremendous odds, and outnumbered by five to one, has founded and is striving to maintain and strengthen a civilization and a polity which will do shame neither in its freedom nor its

morality to the traditions of his race. The white men in South Africa are no longer merely a garrison. One hundred years ago there were but a few thousand of them; to-day they number over a million. What they may attain to in future, and to what extent South Africa can ever become a white man's country, cannot be foreseen; but they have already reached the maturity of a nation, and they cannot be denied the constitutional freedom to which their status entitles them.

Thus a situation has arisen the significance of which has not hitherto been fully grasped. The British nation has been singularly successful in the past in its government of inferior races. In Asia and in Africa it may lay claim to a record to which no other nation can pretend. But its success has been invariably proportioned to the simplicity of the racial problem with which it has been faced. Where there has been no question of competition between white and black, it has attained unexampled success by capable administration and by the application of certain simple principles of liberality, justice, and humanity. It has been much less successful where white men and black are living side by side. Even when the white population has been comparatively small, as in the early days in the Cape Colony, and as is now the case in British East Africa, government from Downing Street has been accompanied by incessant trouble. Many of the calamities of South African history have sprung from this cause. As the

white population has increased, so has the difficulty of the task, until a stage is reached when the attempt is perforce abandoned, and the colony is granted self-government. But hitherto, in the case of South Africa, self-government has never been granted without a reservation in the minds of certain sections, at any rate, of the British public. They admitted that the white population of the colonies must be allowed to determine its own affairs; they did not admit that the right extended to the government of the native populations in their midst. They said in effect, 'You may govern yourselves, but the government of the inferior races is in the last resort our affair.' They did not see that their claim, though a plausible one, reduced self-government to a mockery, since there is no political question in South Africa which does not bear upon the native question, and beside it all other problems sink into insignificance. The British Parliament might as well be restricted from legislating for women. Thus the Liberal party, while granting self-government with one hand, was in danger of taking it away with the other. On two grounds only could they defend their position. They must argue that the colonies were either too weak to undertake the government of the inferior races, or, if they were not too weak, that they were unfit from some inferiority of moral character, or from an ignorance of the true principles of political freedom. The first argument has hitherto had much weight, but

henceforth it will fall to the ground. A stigma such as is implied by the second could be admitted only by a people too weak to resent it.

But not only is the arrogation by the Imperial Parliament to itself of the right to determine native policy inconsistent with the grant of full self-government; it is also impossible to put into practice. A free people can never consent to be governed by a parliament sitting 6,000 miles away, in which they are not represented. It is useless to tell them that the Imperial Parliament claims only to govern the black population, not the white. Every South African knows that from the conditions of the problem such a claim is meaningless. The man who wears the shoe alone knows where it pinches. The proper handling of the native problem is a matter of life and death to the inhabitants of South Africa. They cannot be expected willingly to entrust it to those who have no immediate responsibility, and who would not suffer in life or property from any mistakes they might make. It would be like asking the British nation to submit its naval policy to the determination of South Africa. Any attempt, indeed, to impose on South Africa a policy to which it is strongly opposed can only be carried through by coercion.

Parliament was, therefore, on every ground well advised to show by its action that the grant of self-government had been made completely and without reservation. The least calamity that

must have followed from any other course would have been the postponement of union. The failure to reach the goal they so ardently desired would have been placed by South Africans at the door of the natives. Discord would have been sown between white and black, and South African opinion might have become permanently embittered against the Government of Great Britain.

All this has been said without reference to the question whether South African opinion is or is not more enlightened than British opinion. As Mr. Balfour said, the British Parliament must have a different perspective to that of South Africa, perhaps truer in some respects, certainly less true in others. One may freely admit that a great deal of South African opinion is ignorant, unintelligent, and crude. The man in the street and the man on the veld seldom realize even the elements of the stupendous problem with which they are faced. The policy which attracts them is often one of simple repression. Take away from the native the lands which he possesses, and there will be more compulsion upon him to work for the white man. Do not educate him, or else he will become too independent. Keep him in his place. That is the simple creed of the average white man. He fails to see that in his own interests it is fatal. For, if the black man sinks, he will inevitably drag the white man with him. The Kaffirs too now number six millions. They will soon number ten and twenty millions.

By raising in their breasts a sense of wrong the white man will merely be digging his own grave.

Nevertheless, the germs of a sound public opinion exist. In Cape Colony a truer view of the objects and methods of native administration has prevailed, and the influence of a few enlightened men has been a remarkable leaven on the general opinion of the colony. It is therefore probable that this process will be continued with equal success on the wider stage of the Union.

In this gradual development of opinion lies the best hope for the future. It was impossible without union, since no common native policy was possible. The varying policies of the different colonies merely reacted on one another, and strengthened their antagonism. Nowhere, indeed, are the benefits of union likely to be greater or more permanent than in the matter of the natives.

But whatever may be our view as to the relative enlightenment of South African and British opinion, that is a matter, as will be clear from what has been said, which has no practical bearing on the question of imperial interference. South Africans must find their own salvation. Any attempt to coerce them into the right way will merely confirm them in their course. They must be left to reap wisdom from their own experience.

But, although happily no amendment was made in the provisions relating to natives, the fact that they have been described in the Imperial Parliament as illiberal, unjust, pernicious, and retro-

grade, makes it necessary to see what they are. An impartial study of them may lead to a milder conclusion. Mr. Keir Hardie stigmatized the bill as one 'to unify the white races, to disfranchise the coloured races, and not to promote union between the races in South Africa'. He is both right and wrong. The coloured races are in no way disfranchised, but it is perfectly true that the bill is not intended to promote the union of the black race and the white. No one with a knowledge of South Africa could suppose that any constitution could do that. The intention of the bill, as Mr. Hardie says, is to unite the white races. If an attempt had been made to find in it a solution of the native question, it must unquestionably have failed. Its success, as its framers well knew, could be achieved only by leaving the question of the native franchise where it was. And this is what is done. The provisions relating to natives have all the one object of not prejudicing the question before it can be dealt with by a South African Parliament fully representative of South African opinion.

Let us consider what those provisions are. In the first place as to the franchise. As matters stand, the franchise is reserved in the Transvaal and the Orange River Colony to white men; in Natal a native can obtain a vote, but under restrictions which make the privilege to all intents and purposes nugatory; in the Cape Colony any

man, whether white or black, who has a certain property qualification, and can write his name, is entitled to vote. The position is further complicated by the present British Government's grant of manhood suffrage to the Transvaal and Orange River Colony. If the Convention had wished to create a uniform franchise throughout South Africa, it had various alternatives before it. First, it might have abolished the colour line and extended throughout the Union the Cape franchise for white men and black. As every one knew, this course was impossible. It would have been universally rejected by the population of the north. And not merely because it gave votes to coloured men and Kaffirs. It involved also of necessity the disfranchisement of a certain number of white men, at any rate in the Transvaal and Orange River Colony. Nor did it commend itself to unprejudiced men who recognize that some form of representation must be given to the black races. In the debates in the Imperial Parliament few members seemed to doubt the complete success of the Cape franchise, but, as a matter of fact, competent observers in South Africa deem it open to the gravest question. Cape native administration has indeed been excellent, but it is much to be doubted whether its excellence is in any way the result of the native vote or whether the present franchise affords a proper test for civilization. It is said, for instance, that agents of both political parties are accustomed, when a native, who is

otherwise qualified, cannot write, to teach him to draw his name, and that in this way many natives without any sufficient education are on the roll.

It was equally impossible for the Convention to extend the manhood suffrage of the Transvaal and Orange River Colony over the Union, at any rate without abolishing the native franchise altogether, for not even the most ardent negrophile was prepared to enfranchise the teeming savages of Zululand, the Zoutpansberg, or the Transkei.

Thus, if there were to be no colour bar within the Union, the extension of Cape franchise meant the disfranchisement of white men, the extension of the Transvaal franchise the enfranchisement of savages. It remained to devise an entirely new franchise, and some new test of fitness, more efficient than the Cape franchise, had to be discovered.

Now this problem is the most difficult and critical of all those which face South Africa. What was the test of fitness to be? Was it to be the same for white men and black? There is much to be said for the view that the 'civilization' of a Kaffir needs to be tested by means quite different from those which are sufficient in the case of white men. If, however, the test were the same, what became of the manhood suffrage in the Transvaal and Orange River Colony? Obviously some of the white voters in those colonies must, in this case also, have been disfranchised. Again, if a black man has a vote, is not a white woman

entitled to one? And if white and black men and white women have votes, on what ground is the privilege to be withheld from black women? Or is the true policy separate representation for the coloured races? All these are questions which must be faced in the future, but for deciding which South Africa is certainly not ripe now. Is it conceivable that they should have been settled by the Convention without public discussion or time for thought, as part of a compromise made for the sake of union? Any attempt to do so must infallibly have failed. The Convention, therefore, wisely decided to do no more than protect adequately the rights of the coloured voters in the Cape Colony, secure that Parliament should include men well acquainted with native conditions of life and requirements, and leave the rest to the future. No bill amending the Cape franchise law to the detriment of the natives or coloured men can be passed without a two-thirds majority of the whole Parliament, and in no case can any voter actually registered be deprived of his vote by reason of his race or colour. Otherwise the various franchise laws remain as they are in each colony.

A regrettable concomitant of the compromise on the question of the franchise was the decision that only men 'of European descent' should be qualified to be members of Parliament. Since natives in the Transvaal and Orange River Colony were to have no franchise rights, it would have been illogical to have given them the privilege

of sitting in Parliament, seeing that they had not even a vote. Obviously the two things went together. The same thing was to all intents and purposes true of Natal. An alternative was to allow the privilege to natives and coloured men in the Cape Colony alone. But although such a course might commend itself to liberal men, it was certain that the population of the northern colonies would strenuously oppose the possibility of a black man, to whom they would not give a vote, helping to make laws for them. The Convention was probably right in concluding that union itself would be menaced by the insertion of any such provision. And illiberal though the exclusion of all coloured men is, it involves no practical hardship to the natives. Hitherto natives and coloured men have been qualified for membership of the Cape Parliament. In fifty-five years there has been no single example of the election of either. Moreover, while they are excluded from the Union Parliament, they may still sit in the Cape Provincial Council. And, lastly, this matter will undoubtedly require to be reconsidered when Parliament deals, as sooner or later it must, with the native franchise. The two questions hang together. If a fair solution is reached upon the franchise, whether in the direction of separate representation or not, it is certain that any grievance which natives or coloured men have in the matter of eligibility to Parliament will be likewise redressed.

Nevertheless it is impossible to deny that some

of the coloured or half-caste population, particularly in the Cape peninsula, are fully as well fitted as many white men to become members of Parliament, and it is regrettable that it should have been found necessary for greater ends to place upon them a disability which they feel as a stigma.

It is very probable that the interpretation of the extremely vague term ' of European descent ' will lead to difficulties, and will require definition by the courts. The Convention must have been aware of this probability. It was indeed impossible to devise a term which was at once comprehensive and free from ambiguity. There are many gradations between pure black and pure white. The members of the Convention presumably were not ready to say in so many words that no man, who could be proved to have a trace of black blood in him, should sit in Parliament. They were therefore content with a phrase which, while its final interpretation must be left to the future, will at any rate secure their main purpose.

The South African public are right in treating the question of the franchise as of fundamental importance. It goes to the roots of society. A man's opinion upon it must inevitably depend upon the view which he holds on the whole relation between white men and black. On this great question there is yet no settled opinion in South Africa and time must be given it to make up its mind. The most diverse views are held as to the future place of the black man in the social

organism of the country. One school advocates the policy of segregation. It holds that natural tendencies will always separate the two races and that Government should actively encourage them by settling the black population in the lower and warmer regions of the country, in which the white man does not flourish, while reserving the high veld for the white races. An essential of this policy is that the natives should be left in possession of the land in those parts of the country which are set apart for them, a condition to which many white men would strongly object. To many, again, it appears doubtful whether complete segregation can ever be reached, though they have before them in Basutoland and Bechuanaland indications that the development of the Kaffir is sounder when he is removed as far as may be from contact with the white man. Others are opposed to the whole idea. They believe that the two races, if not destined in the far distant future to form one, must at least make up their minds that they have to live together, and that the sooner this fact is faced the better. They demand that any tentative attempts at segregation such as the maintenance of the protectorates of Basutoland and Bechuanaland should be forthwith abandoned. If this view is correct, somehow or other some place in the social organism must be found for the black man. Crude repression and sentimentalism will both fail. The Kaffir cannot be treated either as an equal or as a child.

But in the complexity of modern civilization it must be confessed that at present he is more of a child than a man. With the exception of a very limited number of educated natives, the Kaffirs have not the vaguest idea of what parliamentary government means. They have never heard of the franchise and do not want it. The ancient Britons of Caesar's time would be more capable of understanding the British Constitution of to-day than the Kaffirs of giving an explanation of the South Africa Act.

Thus the backwardness of the Kaffirs and the divided opinion of white men are both arguments for deliberation. No immediate solution can be expected, and the pitfalls into which other countries have fallen demonstrate the need of the utmost caution.

The remaining important question relates to the future administration of the protectorates of Basutoland, Bechuanaland, and Swaziland. Hitherto they have been governed by the High Commissioner on behalf of the Imperial Government. Their administration has been successful. The natives are satisfied and do not wish for any change. In Basutoland at any rate they are rapidly advancing in wealth, and are acquiring the first elements of civilization under happier auspices than elsewhere, for their seclusion helps them to resist the worst vices of the white man. But in time it is inevitable that the government of these countries should be entrusted to the people of

South Africa. In the opinion of the Imperial Government the present moment was proper for the determination of the conditions upon which the ultimate transference of the administration of these countries should take place, and it was therefore both the right and the duty of the Imperial Parliament to see that safeguards sufficient to secure good government were inserted. The protectorates are different both in their physical characteristics, and in the races which inhabit them. Basutoland is a rich but mountainous country. It is thickly populated by a warlike and energetic race. Bechuanaland on the other hand is a dry flat bushy country, a large part of it desert, and its inhabitants have neither the energy nor the capacity of the Basutos. No white man is allowed to acquire land or settle permanently in Basutoland or the Bechuanaland Protectorate. Swaziland is in its physical characteristics more akin to Basutoland, but in reality presents a problem entirely different. For two-thirds of Swaziland now belong to white men. The white population is growing, and in time to come it will be impossible to govern Swaziland as if it were a purely native country.

For the present, however, the Imperial Government has thought it well to treat all three countries on the same footing. It has recognized that when the day of transfer comes, there must be no sudden transition in the form of government. The place of the High Commissioner will be taken by the Prime Minister, assisted by a Commission,

constituted very much on the lines of the India Council. In all probability the existing form of administration will continue almost unchanged. All native authorities are agreed in the opinion that personal government of some form or other affords the best hope of the successful administration of native territories. A native cannot understand why his rulers should be constantly changing, as they do under responsible government. He has no sooner learnt to look up to one man as his ruler than he finds another in his place. The Commission will give the new form of government the very necessary characteristic of permanence. Safeguards for securing to the natives their land, and for prohibiting the sale of liquor have been properly inserted. The Protectorates are not secured in the Act against the imposition by the Union of hostile tariffs or high transit duties. But there is no reason to suppose that they will not be as fairly dealt with in the future as they have been in the past.

It is quite possible that some time may elapse before the transfer of any of these territories. Before any such step is taken, the Imperial Government will have to be clear that it is desirable. But eventually it must be taken, and when that day comes, the provisions of the Act will fully safeguard the interests of the natives.

# CHAPTER XI

## GENERAL REFLECTIONS ON THE CONSTITUTION

The most striking characteristic, perhaps, of the Constitution is its trust in the future. In other countries people and states have usually been most loth to part with one tittle of their independence or individuality, and constitutions have for the most taken the form of very definite contracts of partnership setting forth in precise language exactly what each partner surrenders and what he retains. The partners have generally been full of suspicion both of one another and of the new Government which they were creating. There is little of this spirit in the South Africa Act. The people of South Africa are, in General Smuts's words, called upon to pool their patriotism as well as their material resources. Undoubtedly there are plenty of compromises, but they are for the most part of a temporary nature, intended like wheels for an aeroplane, to enable the unitary ship of state to get fairly started on its way. They do not jeopardize first principles. The spirit of trust in the new government to be created is evident in every part of the Act. Its most striking manifestation is in the principle of the supremacy of Parliament; but it is apparent also in the willingness of the colonies to assent to the complete

repeal of their present constitutions ; in the power granted to Parliament to recreate the Senate in any form it likes at the end of ten years ; in the determination to leave the supremely important question of the financial relations between the central government and the provinces to be settled by Parliament. The Constitution breathes also a new spirit of trust between the two dominant white races. In the future there is to be equality of opportunity. 'Equal rights' are to apply, not only to votes, but to language also. The Constitution carefully avoids any suspicion of the dominance of one race over another. It was even decided to return to the name 'Orange Free State', which is so dear to the hearts of the Boers of that colony. Whatever their opinions may have been in the past, South Africans are fairly well agreed that in the future equality is the only road to peace. They recognize that the two races, equal as they are in number and in influence, must live together. Neither can hope to attain an ascendancy over the other. The best that can be done is to remove all causes of bitterness and distrust and to leave the issue to the incalculable forces of the future. No one supposes that in the future racial antagonisms will cease to cause political strife, or that bilingualism will ever be anything but a curse. But racialism need no longer be the dominant issue in politics, and, that once gained, the rest may ultimately follow.

An eminent historian has remarked that 'the

success of most great political operations will, if narrowly examined, be found to consist in the fact that they are carefully circumscribed in scope and divested of embarrassing and inflammatory matter'. The South African Union will probably be a testimony to the truth of this saying. The Constitution is lengthy; sometimes it descends into minute detail. Nevertheless, all its provisions are strictly germane to its great object. It sets up a framework of union; it creates a government strong enough to cope with the harassing problems which afflict the country, but it wisely makes no attempt to settle those problems itself. The question of the franchise, including the native franchise, a premature settlement of which at this stage must indubitably have wrecked union, is left *in statu quo*; the problem of Asiatic immigration is not mentioned; no attempt is made to bring about uniformity in taxation or in law. Its fundamental provisions are framed on broad and simple lines, and no extraneous questions are raised to distract public attention from the main issue.

Other striking aspects of the document are its modernity and its curious mixture of conservatism with democracy. It is not 'advanced' after the fashion of the Australian Constitution. 'The people' are mentioned but once, and then only casually in a somewhat unimportant financial provision adopted verbally from the Commonwealth Act. The constitution of the Senate is

essentially undemocratic. On the other hand, the Act enshrines some of the latest devices of democracy, such as 'one vote one value', automatic redistribution, and proportional representation—devices which the Prime Minister of the Cape Colony, to whom advanced democracy is personally abhorrent, has elegantly described as 'ridiculous democratic ideas' and 'mischievous jim-jams'.

It is the spirit of a people and the wisdom of their leaders which determines the success or failure of any instrument of government. The South African people, few as they are in number, are composed of diverse elements. The population of the towns, particularly Johannesburg, is mercurial in its temperament. If the share-market is cheerful, Johannesburg troubles itself little about its government. If it is depressed there is nothing which it does not criticize. In the gloomy times of 1904 it was said that if a man had a bad hand at bridge he cursed Lord Milner. There is no place in which a more sudden and violent agitation can be raised. Nevertheless, the town population is composed of sound elements, democratic, progressive, conciliatory, and anxious for good and clean government. It can be trusted in the future staunchly to support the well-tried methods of British administration. Dutch political ideas, on the other hand, are different. In the Transvaal one might almost say that the clan system still lingered, with all its virtues and faults.

The Boers are democratic, but not in the modern manner. Their passion for independence and self-government is equalled by their detestation of licence. They look for a leader who is worthy of their confidence, and, having found him, they are content to leave all ordinary matters of government to him. Such a method of government, impossible as it would be in any but a comparatively simple community, has the conspicuous merits which historians tell us are to be found in a benevolent despotism or the German tribal system. But in this form of government everything depends on the qualities of the leaders. The despot must be wise as well as benevolent. Therefore it is sincerely to be hoped that those statesmen who have earned the confidence of the people of the Transvaal, and whom popular rumour credits with the larger share in the work of the national Constitution, may equally earn the confidence of all South Africa, and help to shape her destinies during the forthcoming critical years. But, whatever the future, one may predict that it will be long before South Africa suffers from those political excesses to which the city democracy of to-day is prone, and for the simple reason that the whole white population is itself an aristocracy ruling as inferiors the subject and vastly larger Bantu population. In such a society every white man is a member of a superior race, and where the proletariat is black, extreme democracy will never thrive.

# CHAPTER XII

## THE FUTURE OF PARTIES

In his book on Canada Mr. Goldwin Smith makes the following remark: 'The absence in the debate on Confederation of any attempt to forecast the composition and action of Federal parties fatally detracts from the value of the discussion. If Australia or any other group of colonies thinks of following the example of Canada, a forecast, as definite as the nature of the case will permit, of Federal parties will be at least as essential to the formation of a right judgement as the knowledge of anything relating to the machinery of the Constitution.'

Whatever one may think of this sweeping statement, it is no doubt interesting to reflect on the probable future of parties in South Africa during the next few years. At the same time to make a prediction of any value is a matter of extreme difficulty. One can but indicate possibilities. For what principles are parties likely to stand? Where will the dividing line be drawn? What are the questions which will be fought out in the political arena? The observer who takes the past as his guide will notice the strong tendency in South Africa towards the two-party system. He may ignore in his inquiry Natal and the Orange River Colony. The population there is too small and homogeneous and the preponderance of one of the white races over the other too marked to

afford scope for proper party divisions. In the Cape Colony, however, groups have never been powerful and Parliament has usually been divided into two well-defined parties. Responsible government has brought about a similar result in the Transvaal. There is every likelihood, therefore, of the two-party system continuing. Independents are not popular, and it will be long before the labour party can throw much weight into the scale.

In the past the two parties have found their main line of cleavage in race. The Progressives in the Cape and the Transvaal are the British parties; the Bond and Het Volk are the Dutch parties. There are Englishmen in the Dutch parties and Dutchmen in the British, but these are the exceptions which prove the rule. It is generally taken for granted that the first elections will follow broadly the present line of cleavage. It is assumed that existing party organizations will be maintained, and that the Dutch parties, the Unie in the Orange River Colony, Het Volk in the Transvaal, and the Bond in the Cape Colony, will be found on the same side, while the majority in Natal will range itself on the side of the Progressives in the Transvaal and Cape Colony. Certainly such a result would seem to be only natural, if only because the natural tendency of existing party organizations will be to exert a strong force in that direction. It would be absurd, too, to suppose that the racial division between British and Dutch, which permeates the

whole life of the country, in language as well as religion, and which must colour the consideration of many important political questions, will be at once obliterated. It must play a large part in party divisions for a long time to come. This is all the more certain from the fact that the racial division will coincide roughly with the line of cleavage between town and country, which is at present perhaps the next most fundamental division in the social and political life of the country.

Yet the possibility of some grouping of parties not on present lines should not be dismissed as inconceivable. According to the Constitution, the first act of the Governor-General must be to send for a leading South African statesman to form a ministry, and he must, it would seem, make his selection from the parties at present in office. Much will depend on his choice of persons. The statesman whom he summons will have more than one alternative before him. He may aim first at forming a coalition ministry, containing the leaders of both races; and there is much to be said for such a course.

The Constitution imposes an immense burden upon the first Union Government, and few even in South Africa realize the greatness of the task. The Constitution itself is but a skeleton, and its bones must be clothed with flesh. The first years after Union will therefore be critical for the South African nation. A Government is needed which is resolutely determined to look with a single eye

to the progress and development of the country, and which is strong enough to ignore personal differences, and to deal with the many problems before it with absolute impartiality, and without reference to race. Certainly it would seem that only a coalition Government is likely to be able to carry such a policy into practice. It alone would start without bias towards either side. Failing a coalition, it may be difficult to avoid some recrudescence of racial feeling. But this is exactly what the best men on both sides wish to avoid. Not only would it undo much of the work of the last two years, but it would stereotype present racial divisions, and make the attainment of any healthier composition of parties more difficult. But there are weighty arguments on the other side also. In the first place in any coalition each party must go in on fair and equal terms. This may well be impossible to arrange. Then a coalition may come to grief, if it is not founded on true community of aim. Any such breakdown must intensify rather than mitigate racial divisions. Again, all experience goes to show that the health of Parliamentary Government is damaged by coalitions. A strong opposition is as essential to the working of the Parliamentary machine as a strong Government. In the building up of a new nation both a strong Government and a strong opposition are needed, and whichever party is in power, criticism, honest but keen, is essential. With a coalition there

would be a risk of the settlement of vital questions by unsatisfactory compromises, entered into by the leaders of both sides without any sufficient public discussion.

If, for whatever reason, a coalition Government is not formed, the prospective Prime Minister must choose his cabinet from his own party and the parties in sympathy with him. This may be no easy matter. In the first place, he will have at most one party under his command, that, namely, in his own colony. He will have to negotiate with the others in the remaining colonies, just as one independent nation negotiates with another. And there are many delicate matters to be settled, such as the distribution of portfolios between the colonies, and the use to be made of the considerable amount of patronage in the shape of Administratorships and Commissionerships, which the Government will have at its bestowal.

Furthermore, the parties at present holding office, just as other parties, undoubtedly contain a reactionary as well as a liberal section, and the choice of a leader and a programme equally acceptable to both may be difficult.

Thus the task of the man who is called upon to form a cabinet will be no easy one. If the differences between the parties in the different colonies or their leaders proved deep-seated, there might be considerable difficulty in reconciling them, and in forming a Government fully representative of all of them. Yet such an outcome is perhaps

improbable, since the forces against any disruption will be strong. Public opinion will recognize the evil of starting the Union with a hopelessly weak Government, and certainly no Government could last, to which both existing parties, whether it were in the Cape Colony or the Transvaal, were hostile. It is likely, therefore, that the first cabinet will be composed of members of all the present Governments. What its programme will be is another matter, and will depend on the relative strength of the influences within it. The elections will no doubt be held as soon as possible after the formation of the Government. It is useless, however, to attempt to forecast their result. Much will depend on the personnel of the Government and on the programmes which the different parties put forward.

Looking, however, beyond the immediate future, one may already descry questions which may also help towards the formation of other party combinations. First there is the division between town and country. The towns will bear the taxation; the country will want the money to spend. The country will be united as one man against the taxation of landed property or the imposition of any burdens upon it. The country will generally be conservative and the towns progressive. The country will be protectionist, while the inland towns at any rate will incline to free trade. On the other hand, the coast towns, thinking that industrial development will centre there, will favour protection against imported manufactures.

In this expectation they may be mistaken. Modern industry generally goes where there is cheap power. Owing to the abundance of coal and the conditions of the mining industry, electric power will be produced more cheaply near the Rand than almost anywhere in the world. This is a factor the effect of which may in time be far-reaching. The country again will as a whole probably resist the active encouragement of immigration; the towns will favour it. Finally, there must be reckoned the prejudice with which all parts of South Africa view the Rand.

Nevertheless, although there will undoubtedly always be differences of opinion between town and country, too much must not be made of them. It is in the Transvaal that the feeling of antagonism among the rural population towards the towns was strongest. Yet it is now disappearing. In the old days before the war there was a great gulf fixed between the urban and rural population. Under the dominance of President Kruger's ideas, and incited by all the trouble to which his methods of Government led, the Boers learnt to hate Johannesburg and its population. They were quite naturally ready enough to make what money they could out of the Rand. But they merely wished to squeeze the orange, and then throw it away. Both they and their President were reluctant to admit that the great gold-mining industry could ever be of any permanent value to the country. Thus between town and country

there was practically no intercourse. Neither recognized that their interests were in reality identical, and the progressive elements of the towns had no opportunity to influence the intense conservatism of the country. Nowadays all is different. The farmers have awoken to the value of the Rand as their market, and the Rand sees that its interests are bound up with the general prosperity of the country. Mutual knowledge and intercourse is growing. The leaders of the mining industry have shown in a practical manner their desire to help the prosperity of agriculture, and one of the largest agricultural shows in South Africa is now held at Johannesburg. The former contempt for the application of science to agriculture is disappearing, and farmers are becoming keen to adopt the latest methods. All these tendencies will help to draw closer together the town and country population, and what is true of Johannesburg is in a measure true also of other towns in South Africa.

A further division will be between coast and inland, which will cut across any division between the provinces themselves. For a short time perhaps provincial feeling may be strong, but any division of parties based upon it, being unnatural, can only be temporary. The interests of the northern Cape Colony, for instance, are identical with those of the Free State; the interests of Kimberley with those of the Rand. Transvaal statesmen are determined to avoid the lop-sided

concentration of wealth and industry in great coastal towns which characterizes Australia, and their determination is reflected in the Constitution. Their economic policy, in the matter of customs duties, railway rates, and other means to their hand, will be to foster development inland and upon the coast equally. The coast towns will probably resent what they may deem an interference with natural laws. But if regard is had to the vast mineral wealth in the interior, whether gold, coal, or iron, there is every probability that the policy deserves to succeed and will succeed.

In addition to other questions not of immediate importance, such as the antagonism between capital and labour, between the propertied and non-propertied classes, in a struggle between which, if it ever became acute, there would be found on the same side the land-owners and the mine-owners, there remain three main questions—the native question, immigration, and the public service—all of which must be dealt with in the near future, and the first two of which might cause a reconstruction of parties.

Any settlement of the native franchise will raise the fiercest passions. No government will touch it until they are compelled to, but, as it cannot for ever be left in its present anomalous position, sooner or later it must be faced. It may result in quite new divisions in politics.

The encouragement of immigration, with which will also be connected the proper treatment of the

indigent whites, who are now being bred in large numbers, is another matter of the first importance if the white races are to make headway against the black. There are difficulties in the way, but they can be overcome. This cause will rally all those who are in favour of active steps being taken to increase the white population. It will probably be taken up strongly by the party corresponding to the present Progressive parties, and be resisted by the Dutch, who, notwithstanding the ease with which newcomers become South Africans in spirit, have not yet got over their dislike of Uitlanders, and by those, not a few in number, whose national patriotism takes the narrow form of a belief in South Africa's self-sufficiency and independence of the outside world. The labour party, as in Australia, may also resist any policy of immigration.

The treatment of the indigent white problem will also probably divide parties. The problem exists in practically all the colonies, particularly in the Transvaal and the Cape Colony. The causes which have led to the growth of a poor white class are various. They were graphically described in an able report published in 1907 by the Transvaal Indigency Commission. Perhaps the most important cause has been the continuous impoverishment of the poor population by the grant of Government doles. Grants of money or cattle or land were the favourite means employed by President Kruger of helping his 'poor burghers'. The Indigency Commission irrefragably proved the hope-

lessness of this method of combating the evil. It is a remedy which merely aggravates the disease. Nevertheless, it is one to which the population are accustomed, and which naturally they believe in to a man. The temptation, therefore, for the Government to relieve for the time being the pressure which their followers bring to bear upon them, by the simple expedient of pouring more money into this bottomless pit, is strong. Indeed, it has often proved too strong.

If, however, the indigent whites are not to increase and multiply in the future, and in the present are to be rescued from their pitiable condition, the proper remedies must be applied. Doles will only demoralize both those who give and those who receive. On political grounds alone they are open to the strongest objection. But these are principles which may appear hard to the party which by means of manhood suffrage the indigent whites are enabled to do something to support.

The question of the public service, the maintenance of its purity and the manner of its recruitment, will require to be faced by the Union Parliament almost at once. Every party is equally concerned in its purity, but they will probably differ as to the means to secure it. Those representing the present Progressive parties, if true to their traditions, will demand the appointment of an independent Commission, somewhat on Australian lines, to determine recruitment and even promotion. Another large party will pro-

bably favour the retention by the Government of freedom in these matters. In the eyes of a large section of the Dutch a Government is not worthy of its name unless it can make appointments of its own free will, and find posts for its friends and supporters. The question is one of the utmost importance. The pernicious 'spoils system' is ruinous to any country. It is a danger of a peculiarly insidious nature and one to which South Africa may for various reasons be considered prone. Signs are not wanting that the danger is even now far from imaginary. A sound law protecting the Government from itself will be required if the high traditions of British Civil Services throughout the world are to be maintained.

From this short survey it is clear that there will be opportunities in future for parties to form themselves on lines which will blur and may eventually obliterate the racial cleavage. Pessimists no doubt will say, it must be admitted with some plausibility, that nothing will split the Dutch, or unite the British. But though this has been so in the past, circumstances are now so changed that the future may be very different. There is in all countries a natural division between the influences of reaction and progress, of conservatism and liberalism. In South Africa these influences have hitherto never had room to grow naturally. But, as elsewhere, they exist, and in time they will prove themselves to be stronger and more lasting than any other.

# CHAPTER XIII

## SOUTH AFRICA AND THE EMPIRE

Great empires are welded together by pressure from without. Particularly in an empire whose parts lie scattered over the four seas some such pressure is needed to bring home to the ordinary citizen the weakness of disunion. In this way it may happen that the external dangers now threatening the British Empire will knit together in a more real union the nations which it embraces. Just as the British Empire could never have come into being but for Great Britain's command of the sea, so it will disappear the moment that supremacy is lost. With the growth of the German and American navies this fact has become clear not only to the people of Great Britain but to those of the great self-governing colonies as well. It is not less vital to them than to Great Britain. Not only has Canada to guard a frontier of thousands of miles, but if she relies on her own strength she is defenceless against the American, or, indeed, any other fleet. Similarly the Australians, separated by the breadth of the world from their European home, are menaced in their far away southern seas by the overshadowing danger of the yellow races. South Africa appears at first sight to be more fortunate. But

in reality there is no part of the Empire to which Great Britain's supremacy at sea is more vital.

South Africa cannot live apart from the world. In the first place she depends for her prosperity on the export of her minerals. If a hostile power were in command of the sea, the risks to the safe carriage of raw gold and diamonds from Johannesburg and Kimberley would be so enormous that the mines would probably have to stop working. That would be a calamity not only to the Treasury and to the populations of the great towns, but to the farmers, who look to the latter as their only market. The country's whole industrial and agricultural life would come to a sudden stop.

Then again, Simon's Bay is still, notwithstanding the Suez Canal, one of the most important naval stations in the world, the Gibraltar of the southern hemisphere. Its retention by South Africa is only secure so long as Great Britain's supremacy at sea is unchallenged. If that were lost it would not be a difficult matter for a great power to seize the peninsula stretching from Simon's Town to Cape Point and make it impregnable against attack from land.

Furthermore, South Africa depends on imports almost as largely as Great Britain. With the British fleet destroyed it would be easy to blockade the few British South African ports and throttle all trade, whether import or export.

It is clear indeed that no country is more dependent on sea-power. Moreover, South Africans

keep in mind that there are other European powers besides Great Britain interested in their country, and near neighbours to them. They bear no grudge against them, but they recognize that it would be foolish to ignore the possibility of war between one or other of them and Great Britain. In that event South Africa's position may be precarious, for she would seem a noble prize for any power ambitious of colonial expansion. But if the day of trial ever comes, South Africa will show to the world that her price is high.

Meanwhile these possible dangers are present to the minds of South African statesmen and are beginning to filter through the public consciousness. The only insurance against them is the British fleet. A South African republic, independent of the British Empire, would be defenceless. Apart from all other considerations, there is in the necessity of naval defence, therefore, the strongest reason why South Africa should remain a part of the Empire. But there are other forces also tending in the same direction. South Africa stands to gain more than perhaps any other portion of the Empire by the grant of preferential treatment to her products. Tobacco, wine, and brandy, which she could produce in vast quantities, and of a sound quality, are articles upon which it would be particularly easy for Great Britain to grant her a substantial preference. In some of them she would certainly be able to compete suc-

cessfully with other countries. Then again she could produce sufficient maize to supply the whole market of Great Britain, which imports from other countries many million pounds worth every year. South Africa has for the past six years granted a preference to British goods. The grant of a reciprocal privilege would be of great value both materially and as a means of strengthening the bonds between the two countries.

But South Africa has no right to demand any sacrifice from Great Britain. As things stand to-day, she has much the best of the bargain. The Dutch cannot be expected to be grateful for the money which the Imperial Treasury spent like water during the war, but the British are, and most reasonable men of both races will admit that the British tax-payer has done and is doing his fair share towards paying the price of union. Towards naval defence South Africa contributes practically nothing. She is assisted by Great Britain in land defence to no small extent. Lastly, Great Britain has generously pledged her credit to the extent of £40,000,000 on behalf of the Transvaal. The South African tax-payer is thereby relieved of taxes to the extent of several hundred thousand pounds worth a year.

There are no corresponding disadvantages in the Imperial connexion to set against these benefits. In the past there have been reasons which made it impossible for the Imperial Government to

abstain from interference in the domestic affairs of the country. But the nation has now grown to maturity, and so soon as it is prepared to take up the full responsibility for its internal defence it can claim, and must be accorded, the same freedom in the management of its internal affairs as is granted to Canada and Australia. It may seem hard to one class of politician in England to renounce the right of enunciating South Africa's native policy. But so long as the actions of the South African Government do not conflict with Imperial interests and are in consonance with the humane and liberal traditions of Great Britain, such interference should not be countenanced. At the best it would be as ineffective as it would be irritating. The South African people must of necessity decide this matter for themselves. It may with confidence be left to their wisdom and judgement.

Finally, when we consider that the British Empire guarantees to South Africa not only liberty, but also security, a combination of privileges which she could possess neither as an independent power nor under the hegemony of any other empire, we may believe with confidence that to the invincible patriotism of the British section of the population will be added the reasoned attachment of the Dutch, and that unless some cataclysm overtakes the Empire, South Africa will remain a part of it and be ready to take a full share of its responsibilities as well as its privileges.

# APPENDIX

## SOUTH AFRICA ACT, 1909.

[9 Edw. 7. Ch. 9.]

ARRANGEMENT OF SECTIONS. A.D. 1909.

I.—Preliminary.

Section.


1. Short title.
2. Definitions.
3. Application of Act to King's successors.

II.—The Union.

4. Proclamation of Union.
5. Commencement of Act.
6. Incorporation of Colonies into the Union.
7. Application of Colonial Boundaries Act, &c.

III.—Executive Government.

8. Executive power.
9. Governor-General.
10. Salary of Governor-General.
11. Application of Act to Governor-General.
12. Executive Council.
13. Meaning of Governor-General in Council.
14. Appointment of ministers.
15. Appointment and removal of officers.
16. Transfer of executive powers to Governor-General in Council.
17. Command of naval and military forces.
18. Seat of Government.

IV.—Parliament.

19. Legislative power.
20. Sessions of Parliament.
21. Summoning of first Parliament.
22. Annual session of Parliament.
23. Seat of Legislature.

*Senate.*

24. Original constitution of Senate.
25. Subsequent constitution of Senate.
26. Qualifications of senators.
27. Appointment and tenure of office of President.
28. Deputy President.

A.D. 1909. Section.

29. Resignation of senators.
30. Quorum.
31. Voting in the Senate.

*House of Assembly.*

32. Constitution of House of Assembly.
33. Original number of members.
34. Increase of number of members.
35. Qualifications of voters.
36. Application of existing qualifications.
37. Elections.
38. Commission for delimitation of electoral divisions.
39. Electoral divisions.
40. Method of dividing provinces into electoral divisions.
41. Alteration of electoral divisions.
42. Powers and duties of commission for delimiting electoral divisions.
43. Date from which alteration of electoral divisions to take effect.
44. Qualifications of members of House of Assembly.
45. Duration.
46. Appointment and tenure of office of Speaker.
47. Deputy Speaker.
48. Resignation of members.
49. Quorum.
50. Voting in House of Assembly.

*Both Houses of Parliament.*

51. Oath or affirmation of allegiance.
52. Member of either House disqualified for being Member of the other House.
53. Disqualifications for being a member of either House.
54. Vacation of seats.
55. Penalty for sitting or voting when disqualified.
56. Allowances of members.
57. Privileges of Houses of Parliament.
58. Rules of procedure.

*Powers of Parliament.*

59. Powers of Parliament.
60. Money Bills.
61. Appropriation Bills.
62. Recommendation of money votes.
63. Disagreements between the two Houses.

Section.
64. Royal Assent to Bills.
65. Disallowance of Bills.
66. Reservation of Bills.
67. Signature and enrolment of Acts.

V.—The Provinces.

*Administrators.*

68. Appointment and tenure of office of provincial administrators.
69. Salaries of administrators.

*Provincial Councils.*

70. Constitution of provincial councils.
71. Qualification of provincial councillors.
72. Application of sections 53 to 55 to provincial councillors.
73. Tenure of office by provincial councillors.
74. Sessions of provincial councils.
75. Chairman of provincial councils.
76. Allowances of provincial councillors.
77. Freedom of speech in provincial councils.

*Executive Committees.*

78. Provincial executive committees.
79. Right of administrator, &c. to take part in proceedings of provincial council.
80. Powers of provincial executive committees.
81. Transfer of power to provincial executive committees.
82. Voting in executive committees.
83. Tenure of office by members of executive committees.
84. Power of administrator to act on behalf of Governor-General in Council.

*Powers of Provincial Councils.*

85. Powers of provincial councils.
86. Effect of provincial ordinances.
87. Recommendations to Parliament.
88. Power to deal with matters proper to be dealt with by private Bill legislation.
89. Constitution of provincial revenue fund.
90. Assent to provincial ordinances.
91. Effect and enrolment of ordinances.

*Miscellaneous.*

A.D. 1909. Section.

92. Audit of provincial accounts.
93. Continuation of powers of divisional and municipal councils.
94. Seats of Provincial Government.

VI.—THE SUPREME COURT OF SOUTH AFRICA.

95. Constitution of Supreme Court.
96. Appellate Division of Supreme Court.
97. Filling of temporary vacancies in Appellate Division.
98. Constitution of provincial and local divisions of Supreme Court.
99. Continuation in office of existing judges.
100. Appointment and remuneration of judges.
101. Tenure of office by judges.
102. Reduction in number of judges.
103. Appeals to Appellate Division.
104. Existing appeals.
105. Appeals from inferior courts to provincial divisions.
106. Provisions as to appeals to the King in Council.
107. Rules of procedure in Appellate Division.
108. Rules of procedure in provincial and local divisions.
109. Place of sittings of Appellate Division.
110. Quorum for hearing appeals.
111. Jurisdiction of Appellate Division.
112. Execution of processes of provincial divisions.
113. Transfer of suits from one provincial or local division to another.
114. Registrar and officers of Appellate Division.
115. Advocates and attorneys.
116. Pending suits.

VII.—FINANCE AND RAILWAYS.

117. Constitution of Consolidated Revenue Fund and Railway and Harbour Fund.
118. Commission of inquiry into financial relations between Union and provinces.
119. Security for existing public debts.
120. Requirements for withdrawal of money from funds.
121. Transfer of colonial property to the Union.
122. Crown lands, &c.
123. Mines and minerals.
124. Assumption by Union of colonial debts.

Section.
125. Ports, harbours, and railways.
126. Constitution of Harbour and Railway Board.
127. Administration of railways, ports, and harbours.
128. Establishment of fund for maintaining uniformity of railway rates.
129. Management of railway and harbour balances.
130. Construction of harbour and railway works.
131. Making good of deficiencies in Railway Fund in certain cases.
132. Controller and Auditor-General.
133. Compensation of colonial capitals for diminution of prosperity.

VIII.—General.

134. Method of voting for senators, &c.
135. Continuation of existing colonial laws.
136. Free trade throughout Union.
137. Equality of English and Dutch languages.
138. Naturalisation.
139. Administration of justice.
140. Existing officers.
141. Reorganisation of public departments.
142. Public service commission.
143. Pensions of existing officers.
144. Tenure of office of existing officers.
145. Existing officers not to be dismissed for ignorance of English or Dutch.
146. Compensation to existing officers who are not retained.
147. Administration of native affairs, &c.
148. Devolution on Union of rights and obligations under conventions.

IX.—New Provinces and Territories.

149. Alteration of boundaries of provinces.
150. Power to admit into Union territories administered by British South Africa Company.
151. Power to transfer to Union government of native territories.

X.—Amendment of Act.

152. Amendment of Act.
Schedule.

# CHAPTER 9.

A.D. 1909. An Act to constitute the Union of South Africa.

[20th September 1909.]

WHEREAS it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## I.—PRELIMINARY.

Short title.

**1.** This Act may be cited as the South Africa Act, 1909.

Definitions.

**2.** In this Act, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South Africa as constituted under this Act, and

the words "Houses of Parliament," "House of Parliament," or "Parliament," shall be taken to mean the Parliament of the Union. A.D. 1909.

Application of Act to King's successors

**3.** The provisions of this Act referring to the King shall extend to His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland.

## II.—The Union.

Proclamation of Union.

**4.** It shall be lawful for the King, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, hereinafter called the Colonies, shall be united in a Legislative Union under one Government under the name of the Union of South Africa. On and after the day appointed by such proclamation the Government and Parliament of the Union shall have full power and authority within the limits of the Colonies, but the King may at any time after the proclamation appoint a governor-general for the Union.

Commencement of Act.

**5.** The provisions of this Act shall, unless it is otherwise expressed or implied, take effect on and after the day so appointed.

Incorporation of colonies into the Union.

**6.** The colonies mentioned in section four shall become original provinces of the Union under the names of Cape of Good Hope, Natal, Transvaal, and Orange Free State, as the case may be. The original provinces shall have the same limits as the respective colonies at the establishment of the Union.

Application of 58 & 59 Vict. c. 34, &c.

**7.** Upon any colony entering the Union, the Colonial Boundaries Act, 1895, and every other Act applying to any of the Colonies as being self-governing colonies or colonies with responsible government, shall cease to apply to that colony, but as from the date when this Act takes effect every such Act of Parliament shall apply to the Union.

A.D. 1909.

## III.—EXECUTIVE GOVERNMENT.

Executive power.

**8.** The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a governor-general as His representative.

Governor-General.

**9.** The Governor-General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him.

Salary of Governor-General.

**10.** There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

Seat of Governor-General.

**11.** The provisions of this Act relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the government of the Union. The King may authorise the Governor-General to appoint any person to be his deputy within the Union during his temporary absence, and in that capacity to exercise for and on behalf of the Governor-General during such absence all such powers and authorities vested in the Governor-General as the Governor-General may assign to him, subject to any limitations expressed or directions given by the King; but the appointment of such deputy shall not affect the exercise by the Governor-General himself of any power or function.

Executive Council.

**12.** There shall be an Executive Council to advise the Governor-General in the government of the Union, and the members of the council shall be chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure.

Meaning of Governor-General in Council.

**13.** The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Executive Council.

A.D. 1909.

Appointment of ministers.

**14.** The Governor-General may appoint officers not exceeding ten in number to administer such departments of State of the Union as the Governor-General in Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's ministers of State for the Union. After the first general election of members of the House of Assembly, as hereinafter provided, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament.

Appointment and removal of officers.

**15.** The appointment and removal of all officers of the public service of the Union shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by this Act or by a law of Parliament to some other authority.

Transfer of executive powers to Governor-General in Council.

**16.** All powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in the Governor or in the Governor in Council, or in any authority of the Colony, shall, as far as the same continue in existence and are capable of being exercised after the establishment of the Union, be vested in the Governor-General or in the Governor-General in Council, or in the authority exercising similar powers under the Union, as the case may be, except such powers and functions as are by this Act or may by a law of Parliament be vested in some other authority.

Command of naval and military forces.

**17.** The command in chief of the naval and military forces within the Union is vested in the King or in the Governor-General as His representative.

Seat of Government.

**18.** Save as in section twenty-three excepted, Pretoria shall be the seat of Government of the Union.

## IV.—Parliament.

Legislative power.

**19.** The legislative power of the Union shall be vested in the Parliament of the Union, herein called Parliament, which shall consist of the King, a Senate, and a House of Assembly.

A.D. 1909.

Sessions of Parliament.

**20.** The Governor-General may appoint such times for holding the sessions of Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue Parliament, and may in like manner dissolve the Senate and the House of Assembly simultaneously, or the House of Assembly alone: provided that the Senate shall not be dissolved within a period of ten years after the establishment of the Union, and provided further that the dissolution of the Senate shall not affect any senators nominated by the Governor-General in Council.

Summoning of first Parliament.

**21.** Parliament shall be summoned to meet not later than six months after the establishment of the Union.

Annual session of Parliament.

**22.** There shall be a session of Parliament once at least in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next session.

Seat of Legislature.

**23.** Cape Town shall be the seat of the Legislature of the Union.

*Senate.*

Original constitution of Senate.

**24.** For ten years after the establishment of the Union the constitution of the Senate shall, in respect of the original provinces, be as follows:—

(i) Eight senators shall be nominated by the Governor-General in Council, and for each original province eight senators shall be elected in the manner hereinafter provided:

(ii) The senators to be nominated by the Governor-General in Council shall hold their seats for ten years. One-half of their number shall be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. If the seat of a senator so nominated shall become vacant, the Governor-General in Council shall nominate another person to be a senator, who shall hold his seat for ten years:

(iii) After the passing of this Act, and before the day appointed for the establishment of the Union, the Governor of each of the Colonies shall summon a special sitting of both Houses of the Legislature, and the two Houses sitting together as one body and presided over by the Speaker of the Legislative Assembly shall elect eight persons to be senators for the province. Such senators shall hold their seats for ten years. If the seat of a senator so elected shall become vacant, the provincial council of the province for which such senator has been elected shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. A.D. 1909.

Subsequent constitution of Senate.

**25.** Parliament may provide for the manner in which the Senate shall be constituted after the expiration of ten years, and unless and until such provision shall have been made—

(i) the provisions of the last preceding section with regard to nominated senators shall continue to have effect;

(ii) eight senators for each province shall be elected by the members of the provincial council of such province together with the members of the House of Assembly elected for such province. Such senators shall hold their seats for ten years unless the Senate be sooner dissolved. If the seat of an elected senator shall become vacant, the members of the provincial council of the province, together with the members of the House of Assembly elected for such province, shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. The Governor-General in Council shall make regulations for the joint election of senators prescribed in this section.

A.D. 1909.

Qualifications of senators.

**26.** The qualifications of a senator shall be as follows:—
He must—

(*a*) be not less than thirty years of age;

(*b*) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;

(*c*) have resided for five years within the limits of the Union as existing at the time when he is elected or nominated, as the case may be;

(*d*) be a British subject of European descent;

(*e*) in the case of an elected senator, be the registered owner of immovable property within the Union of the value of not less than five hundred pounds over and above any special mortgages thereon.

For the purposes of this section, residence in, and property situated within, a colony before its incorporation in the Union shall be treated as residence in and property situated within the Union.

Appointment and tenure of office of President.

**27.** The Senate shall, before proceeding to the dispatch of any other business, choose a senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President. The President shall cease to hold office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office by writing under his hand addressed to the Governor-General.

Deputy President.

**28.** Prior to or during any absence of the President the Senate may choose a senator to perform his duties in his absence.

Resignation of senators.

**29.** A senator may, by writing under his hand addressed to the Governor-General, resign his seat, which thereupon shall become vacant. The Governor-General shall as soon as practicable cause steps to be taken to have the vacancy filled.

Quorum.

**30.** The presence of at least twelve senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

A.D. 1909.

**31.** All questions in the Senate shall be determined by a majority of votes of senators present other than the President or the presiding senator, who shall, however, have and exercise a casting vote in the case of an equality of votes. Voting in the Senate.

*House of Assembly.*

**32.** The House of Assembly shall be composed of members directly chosen by the voters of the Union in electoral divisions delimited as hereinafter provided. Constitution of House of Assembly.

**33.** The number of members to be elected in the original provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows:— Original number of members.

| | |
|---|---|
| Cape of Good Hope . . . | Fifty-one. |
| Natal . . . . . | Seventeen. |
| Transvaal . . . . . | Thirty-six. |
| Orange Free State . . . . | Seventeen. |

These numbers may be increased as provided in the next succeeding section, but shall not, in the case of any original province, be diminished until the total number of members of the House of Assembly in respect of the provinces herein provided for reaches one hundred and fifty, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period.

**34.** The number of members to be elected in each province, as provided in section thirty-three, shall be increased from time to time as may be necessary in accordance with the following provisions:— Increase of number of members.

(i) The quota of the Union shall be obtained by dividing the total number of European male adults in the Union, as ascertained at the census of nineteen hundred and four, by the total number of members of the House of Assembly as constituted at the establishment of the Union:

(ii) In nineteen hundred and eleven, and every five years thereafter, a census of the European

A.D. 1909.

population of the Union shall be taken for the purposes of this Act:

(iii) After any such census the number of European male adults in each province shall be compared with the number of European male adults as ascertained at the census of nineteen hundred and four, and, in the case of any province where an increase is shown, as compared with the census of nineteen hundred and four, equal to the quota of the Union or any multiple thereof, the number of members allotted to such province in the last preceding section shall be increased by an additional member or an additional number of members equal to such multiple, as the case may be:

(iv) Notwithstanding anything herein contained, no additional member shall be allotted to any province until the total number of European male adults in such province exceeds the quota of the Union multiplied by the number of members allotted to such province for the time being, and thereupon additional members shall be allotted to such province in respect only of such excess:

(v) As soon as the number of members of the House of Assembly to be elected in the original provinces in accordance with the preceding subsections reaches the total of one hundred and fifty, such total shall not be further increased unless and until Parliament otherwise provides; and subject to the provisions of the last preceding section the distribution of members among the provinces shall be such that the proportion between the number of members to be elected at any time in each province and the number of European male adults in such province, as ascertained at the last preceding census, shall

as far as possible be identical throughout the Union:

(vi) "Male adults" in this Act shall be taken to mean males of twenty-one years of age or upwards not being members of His Majesty's regular forces on full pay:

(vii) For the purposes of this Act the number of European male adults, as ascertained at the census of nineteen hundred and four, shall be taken to be—

| | |
|---|---|
| For the Cape of Good Hope | 167,546 |
| For Natal | 34,784 |
| For the Transvaal | 106,493 |
| For the Orange Free State | 41,014 |

Qualifications of voters.

**35.**—(1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person in the province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any province shall be removed from the register by reason only of any disqualification based on race or colour.

Application of existing qualifications.

**36.** Subject to the provisions of the last preceding section, the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle

A.D. 1909.

persons in the corresponding provinces to vote for the election of members of the House of Assembly: Provided that no member of His Majesty's regular forces on full pay shall be entitled to be registered as a voter.

Elections.

**37.**—(1) Subject to the provisions of this Act, the laws in force in the Colonies at the establishment of the Union relating to elections for the more numerous Houses of Parliament in such Colonies respectively, the registration of voters, the oaths or declarations to be taken by voters, returning officers, the powers and duties of such officers, the proceedings in connection with elections, election expenses, corrupt and illegal practices, the hearing of election petitions and the proceedings incident thereto, the vacating of seats of members, and the proceedings necessary for filling such vacancies, shall, mutatis mutandis, apply to the elections in the respective provinces of members of the House of Assembly.

(2) Notwithstanding anything to the contrary in any of the said laws contained, at any general election of members of the House of Assembly, all polls shall be taken on one and the same day in all the electoral divisions throughout the Union, such day to be appointed by the Governor-General in Council.

Commission for delimitation of electoral divisions.

**38.** Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor in Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this

Act, and may appoint persons in any province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor in Council of such colony. In case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor in Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union the expenses of the commission shall be defrayed by the Governor-General in Council, and any vacancies shall be filled by him.

Electoral divisions.

**39.** The commission shall divide each province into electoral divisions, each returning one member.

Method of dividing provinces into electoral divisions.

**40.**—(1) For the purpose of such division as is in the last preceding section mentioned, the quota of each province shall be obtained by dividing the total number of voters in the province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein.

(2) Each province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of subsection (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the province.

(3) The Commissioners shall give due consideration to—

(*a*) community or diversity of interests;

(*b*) means of communication;

(*c*) physical features;

(*d*) existing electoral boundaries;

(*e*) sparsity or density of population;

in such manner that, while taking the quota of voters as

A.D. 1909.

the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

Alteration of electoral divisions.

**41.** As soon as may be after every quinquennial census, the Governor-General in Council shall appoint a commission consisting of three judges of the Supreme Court of South Africa to carry out any re-division which may have become necessary as between the different electoral divisions in each province, and to provide for the allocation of the number of members to which such province may have become entitled under the provisions of this Act. In carrying out such re-division and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division.

Powers and duties of commission for delimiting electoral divisions.

**42.**—(1) The joint commission constituted under section thirty-eight, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor-General in Council—

(*a*) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division:

(*b*) a map or maps showing the electoral divisions into which the provinces have been divided:

(*c*) such further particulars as they consider necessary.

(2) The Governor-General in Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(3) The Governor-General in Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the provinces.

(4) If any discrepancy shall arise between the descrip-

tion of the divisions and the aforesaid map or maps, the description shall prevail. A.D. 1909.

Date from which alteration of electoral divisions to take effect.

**43.** Any alteration in the number of members of the House of Assembly to be elected in the several provinces, and any re-division of the provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

Qualifications of members of House of Assembly.

**44.** The qualifications of a member of the House of Assembly shall be as follows:—

He must—

(*a*) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;

(*b*) have resided for five years within the limits of the Union as existing at the time when he is elected;

(*c*) be a British subject of European descent.

For the purposes of this section, residence in a colony before its incorporation in the Union shall be treated as residence in the Union.

Duration.

**45.** Every House of Assembly shall continue for five years from the first meeting thereof, and no longer, but may be sooner dissolved by the Governor-General.

Appointment and tenure of office of Speaker.

**46.** The House of Assembly shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and, as often as the office of Speaker becomes vacant, the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing under his hand addressed to the Governor-General.

Deputy Speaker.

**47.** Prior to or during the absence of the Speaker, the House of Assembly may choose a member to perform his duties in his absence.

A.D. 1909.

Resignation of members.

**48.** A member may, by writing under his hand addressed to the Speaker, or, if there is no Speaker, or if the Speaker is absent from the Union, to the Governor-General, resign his seat, which shall thereupon become vacant.

Quorum.

**49.** The presence of at least thirty members of the House of Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Assembly.

**50.** All questions in the House of Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

*Both Houses of Parliament.*

Oath or affirmation of allegiance.

**51.** Every senator and every member of the House of Assembly shall, before taking his seat, make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the following form:—

*Oath.*

I, *A.B.*, do swear that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law. So help me God.

*Affirmation.*

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law.

Member of either House disqualified for being member of the other House.

**52.** A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House: Provided that every minister of State who is a member of either House of Parliament shall have the right to sit and speak in the Senate and the House of

Assembly, but shall vote only in the House of which he is a member. A.D. 1909.

Disqualifications for being a member of either House.

**53.** No person shall be capable of being chosen or of sitting as a senator or as a member of the House of Assembly who—

(*a*) has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than twelve months, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election; or

(*b*) is an unrehabilitated insolvent; or

(*c*) is of unsound mind, and has been so declared by a competent court; or

(*d*) holds any office of profit under the Crown within the Union: Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this subsection:

(1) a minister of State for the Union;

(2) a person in receipt of a pension from the Crown;

(3) an officer or member of His Majesty's naval or military forces on retired or half pay, or an officer or member of the naval or military forces of the Union whose services are not wholly employed by the Union.

Vacation of seats.

**54.** If a senator or member of the House of Assembly—

(*a*) becomes subject to any of the disabilities mentioned in the last preceding section; or

(*b*) ceases to be qualified as required by law; or

(*c*) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be;

his seat shall thereupon become vacant.

A.D. 1909.

Penalty for sitting or voting when disqualified.

**55.** If any person who is by law incapable of sitting as a senator or member of the House of Assembly shall, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a member of the Senate or the House of Assembly, he shall be liable to a penalty of one hundred pounds for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any Superior Court of the Union.

Allowances of members.

**56.** Each senator and each member of the House of Assembly shall, under such rules as shall be framed by Parliament, receive an allowance of four hundred pounds a year, to be reckoned from the date on which he takes his seat: Provided that for every day of the session on which he is absent there shall be deducted from such allowance the sum of three pounds: Provided further that no such allowance shall be paid to a Minister receiving a salary under the Crown or to the President of the Senate or the Speaker of the House of Assembly. A day of the session shall mean in respect of a member any day during a session on which the House of which he is a member or any committee of which he is a member meets.

Privileges of Houses of Parliament.

**57.** The powers, privileges, and immunities of the Senate and of the House of Assembly and of the members and committees of each House shall, subject to the provisions of this Act, be such as are declared by Parliament, and until declared shall be those of the House of Assembly of the Cape of Good Hope and of its members and committees at the establishment of the Union.

Rules of procedure.

**58.** Each House of Parliament may make rules and orders with respect to the order and conduct of its business and proceedings. Until such rules and orders shall have been made the rules and orders of the Legislative Council and House of Assembly of the Cape of Good Hope at the establishment of the Union shall mutatis mutandis apply to the Senate and House of Assembly respectively. If a joint sitting of both Houses of Parliament is required

under the provisions of this Act, it shall be convened by the Governor-General by message to both Houses. At any such joint sitting the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply. A.D. 1909.

*Powers of Parliament.*

Powers of Parliament.

**59.** Parliament shall have full power to make laws for the peace, order, and good government of the Union.

Money Bills.

**60.**—(1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(3) The Senate may not amend any Bill so as to increase any proposed charges or burden on the people.

Appropriation Bills.

**61.** Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Recommendation of money votes.

**62.** The House of Assembly shall not originate or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the Session in which such vote, resolution, address, or Bill is proposed.

Disagreements between the two Houses.

**63.** If the House of Assembly passes any Bill and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the Bill with or without any amendments which have been made or agreed to by the Senate and the Senate rejects or fails to pass it or passes it with amendments to which the

A.D. 1909.

House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the Bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such Bill.

Royal Assent to Bills.

**64.** When a Bill is presented to the Governor-General for the King's Assent, he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent, or that he reserves the Bill for the signification of the King's pleasure. All Bills repealing or amending this section or any of the provisions of Chapter IV. under the heading "House of Assembly," and all Bills abolishing provincial councils or abridging the powers conferred on provincial councils under section eighty-five, otherwise than in accordance with the provisions of that section, shall be so reserved. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

Disallowance of Bills.

**65.** The King may disallow any law within one year after it has been assented to by the Governor-General, and such disallowance, on being made known by the Governor-General by speech or message to each of the Houses of Parliament or by proclamation, shall annul the law from the day when the disallowance is so made known.

Reservation of Bills.

**66.** A Bill reserved for the King's pleasure shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General for the King's Assent, the Governor-General makes known by speech or message to each of the Houses of Parliament or by proclamation that it has received the King's Assent.

Signature and enrolment of Acts.

**67.** As soon as may be after any law shall have been assented to in the King's name by the Governor-General, or having been reserved for the King's pleasure shall have received his assent, the Clerk of the House of Assembly shall cause two fair copies of such law, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Governor-General shall prevail.

## V.—The Provinces.

### *Administrators.*

Appointment and tenure of office of provincial administrators.

**68.**—(1) In each province there shall be a chief executive officer appointed by the Governor-General in Council, who shall be styled the administrator of the province, and in whose name all executive acts relating to provincial affairs therein shall be done.

(2) In the appointment of the administrator of any province, the Governor-General in Council shall, as far as practicable, give preference to persons resident in such province.

A.D. 1909.

(3) Such administrator shall hold office for a term of five years and shall not be removed before the expiration thereof except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor-General in Council may from time to time appoint a deputy administrator to execute the office and functions of the administrator during his absence, illness, or other inability.

Salaries of administrators.

**69.** The salaries of the administrators shall be fixed and provided by Parliament, and shall not be reduced during their respective terms of office.

*Provincial Councils.*

Constitution of provincial councils.

**70.**—(1) There shall be a provincial council in each province consisting of the same number of members as are elected in the province for the House of Assembly: Provided that, in any province whose representatives in the House of Assembly shall be less than twenty-five in number, the provincial council shall consist of twenty-five members.

(2) Any person qualified to vote for the election of members of the provincial council shall be qualified to be a member of such council.

Qualification of provincial councillors.

**71.**—(1) The members of the provincial council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the province voting in the same electoral divisions as are delimited for the election of members of the House of Assembly: Provided that, in any province in which less than twenty-five members are elected to the House of Assembly, the delimitation of the electoral divisions, and any necessary re-allocation of members or adjustment of electoral divi-

sions, shall be effected by the same commission and on the same principles as are prescribed in regard to the electoral divisions for the House of Assembly. A.D. 1909.

(2) Any alteration in the number of members of the provincial council, and any re-division of the province into electoral divisions, shall come into operation at the next general election for such council held after the completion of such re-division, or of any allocation consequent upon such alteration, and not earlier.

(3) The election shall take place at such times as the administrator shall by proclamation direct, and the provisions of section thirty-seven applicable to the election of members of the House of Assembly shall mutatis mutandis apply to such elections.

Application of sections 53 to 55 to provincial councillors.

**72.** The provisions of sections fifty-three, fifty-four, and fifty-five, relative to members of the House of Assembly, shall mutatis mutandis apply to members of the provincial councils: Provided that any member of a provincial council who shall become a member of either House of Parliament shall thereupon cease to be a member of such provincial council.

Tenure of office by provincial councillors.

**73.** Each provincial council shall continue for three years from the date of its first meeting, and shall not be subject to dissolution save by effluxion of time.

Sessions of provincial councils.

**74.** The administrator of each province shall by proclamation fix such times for holding the sessions of the provincial council as he may think fit, and may from time to time prorogue such council: Provided that there shall be a session of every provincial council once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the council in one session and its first sitting in the next session.

Chairmen of provincial councils.

**75.** The provincial council shall elect from among its members a chairman, and may make rules for the conduct of its proceedings. Such rules shall be transmitted by the administrator to the Governor-General, and shall have full force and effect unless and until the Governor-General in

A.D. 1909.

council shall express his disapproval thereof in writing addressed to the administrator.

Allowances of provincial councillors.

**76.** The members of the provincial council shall receive such allowances as shall be determined by the Governor-General in Council.

Freedom of speech in provincial councils.

**77.** There shall be freedom of speech in the provincial council, and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such council.

*Executive Committees.*

Provincial executive committees.

**78.**—(1) Each provincial council shall at its first meeting after any general election elect from among its members, or otherwise, four persons to form with the administrator, who shall be chairman, an executive committee for the province. The members of the executive committee other than the administrator shall hold office until the election of their successors in the same manner.

(2) Such members shall receive such remuneration as the provincial council, with the approval of the Governor-General in Council, shall determine.

(3) A member of the provincial council shall not be disqualified from sitting as a member by reason of his having been elected as a member of the executive committee.

(4) Any casual vacancy arising in the executive committee shall be filled by election by the provincial council if then in session or, if the council is not in session, by a person appointed by the executive committee to hold office temporarily pending an election by the council.

Right of administrator, &c. to take part in proceedings of provincial council.

**79.** The administrator and any other member of the executive committee of a province, not being a member of the provincial council, shall have the right to take part in the proceedings of the council, but shall not have the right to vote.

Powers of provincial executive

**80.** The executive committee shall on behalf of the provincial council carry on the administration of provincial affairs. Until the first election of members to serve on the

executive committee, such administration shall be carried on by the administrator. Whenever there are not sufficient members of the executive committee to form a quorum according to the rules of the committee, the administrator shall, as soon as practicable, convene a meeting of the provincial council for the purpose of electing members to fill the vacancies, and until such election the administrator shall carry on the administration of provincial affairs. A.D. 1909. —— committees.

**81.** Subject to the provisions of this Act, all powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in or exercised by the Governor or the Governor in Council, or any minister of the Colony, shall after such establishment be vested in the executive committee of the province so far as such powers, authorities, and functions relate to matters in respect of which the provincial council is competent to make ordinances. Transfer of powers to provincial executive committees.

**82.** Questions arising in the executive committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the administrator shall have also a casting vote. Subject to the approval of the Governor-General in Council, the executive committee may make rules for the conduct of its proceedings. Voting in executive committees.

**83.** Subject to the provisions of any law passed by Parliament regulating the conditions of appointment, tenure of office, retirement and superannuation of public officers, the executive committee shall have power to appoint such officers as may be necessary, in addition to officers assigned to the province by the Governor-General in Council under the provisions of this Act, to carry out the services entrusted to them and to make and enforce regulations for the organisation and discipline of such officers. Tenure of office by members of executive committees.

**84.** In regard to all matters in respect of which no powers are reserved or delegated to the provincial council, the administrator shall act on behalf of the Governor-General in Council when required to do so, and in such Power of administrator to act on behalf of Governor-General in Council.

A.D. 1909.

matters the administrator may act without reference to the other members of the executive committee.

*Powers of Provincial Councils.*

Powers of provincial councils.

**85.** Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects (that is to say) :—

(i) Direct taxation within the province in order to raise a revenue for provincial purposes:

(ii) The borrowing of money on the sole credit of the province with the consent of the Governor-General in Council and in accordance with regulations to be framed by Parliament:

(iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides:

(iv) Agriculture to the extent and subject to the conditions to be defined by Parliament:

(v) The establishment, maintenance, and management of hospitals and charitable institutions:

(vi) Municipal institutions, divisional councils, and other local institutions of a similar nature:

(vii) Local works and undertakings within the province, other than railways and harbours and other than such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise:

(viii) Roads, outspans, ponts, and bridges, other than bridges connecting two provinces:

(ix) Markets and pounds:

(x) Fish and game preservation:

(xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any

ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section:

(xii) Generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province:

(xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council.

Effect of provincial ordinances.

**86.** Any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament.

Recommendations to Parliament.

**87.** A provincial council may recommend to Parliament the passing of any law relating to any matter in respect of which such council is not competent to make ordinances.

Power to deal with matters proper to be dealt with by private Bill legislation.

**88.** In regard to any matter which requires to be dealt with by means of a private Act of Parliament, the provincial council of the province to which the matter relates may, subject to such procedure as shall be laid down by Parliament, take evidence by means of a Select Committee or otherwise for and against the passing of such law, and, upon receipt of a report from such council, together with the evidence upon which it is founded, Parliament may pass such Act without further evidence being taken in support thereof.

Constitution of provincial revenue fund.

**89.** A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the provincial council and all moneys paid over by the Governor-General in Council to the provincial council. Such fund shall be appropriated by the provincial council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General in Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the provincial council unless the administrator shall have first recommended to the council to make provision for the specific service for which the appro-

A.D. 1909.

priation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the administrator: Provided that, until the expiration of one month after the first meeting of the provincial council, the administrator may expend such moneys as may be necessary for the services of the province.

Assent to provincial ordinances.

**90.** When a proposed ordinance has been passed by a provincial council it shall be presented by the administrator to the Governor-General in Council for his assent. The Governor-General in Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General in Council, he makes known by proclamation that it has received his assent.

Effect and enrolment of ordinances.

**91.** An ordinance assented to by the Governor-General in Council and promulgated by the administrator shall, subject to the provisions of this Act, have the force of law within the province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of such ordinance, and, in case of conflict between the two copies thus deposited, that signed by the Governor-General shall prevail.

*Miscellaneous.*

Audit of provincial accounts.

**92.**—(1) In each province there shall be an auditor of accounts to be appointed by the Governor-General in Council.

(2) No such auditor shall be removed from office except

by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. A.D. 1909.

(3) Each such auditor shall receive out of the Consolidated Revenue Fund such salary as the Governor-General in Council, with the approval of Parliament, shall determine.

(4) Each such auditor shall examine and audit the accounts of the province to which he is assigned subject to such regulations and orders as may be framed by the Governor-General in Council and approved by Parliament, and no warrant signed by the administrator authorising the issuing of money shall have effect unless countersigned by such auditor.

Continuation of powers of divisional and municipal councils.

**93.** Notwithstanding anything in this Act contained, all powers, authorities, and functions lawfully exercised at the establishment of the Union by divisional or municipal councils, or any other duly constituted local authority, shall be and remain in force until varied or withdrawn by Parliament or by a provincial council having power in that behalf.

Seats of provincial government.

**94.** The seats of provincial government shall be—

| | |
|---|---|
| For the Cape of Good Hope . | Cape Town. |
| For Natal . . . . | Pietermaritzburg. |
| For the Transvaal . . | Pretoria. |
| For the Orange Free State . | Bloemfontein. |

## VI.—The Supreme Court of South Africa.

Constitution of Supreme Court.

**95.** There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

Appellate Division of Supreme Court.

**96.** There shall be an Appellate Division of the Supreme Court of South Africa, consisting of the Chief Justice of

A.D. 1909.

South Africa, two ordinary judges of appeal, and two additional judges of appeal. Such additional judges of appeal shall be assigned by the Governor-General in Council to the Appellate Division from any of the provincial or local divisions of the Supreme Court of South Africa, but shall continue to perform their duties as judges of their respective divisions when their attendance is not required in the Appellate Division.

Filling of temporary vacancies in Appellate Division.

**97.** The Governor-General in Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any ordinary or additional judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such chief justice, ordinary judge of appeal, or additional judge of appeal, as the case may be.

Constitution of provincial and local divisions of Supreme Court.

**98.**—(1) The several supreme courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective provinces, and shall each be presided over by a judge-president.

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union.

(3) The said provincial and local divisions, referred to in this Act as superior courts, shall, in addition to any original jurisdiction exercised by the corresponding courts of the Colonies at the establishment of the Union, have jurisdiction in all matters—

(*a*) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party:

(*b*) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said superior courts shall mutatis mutandis have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and provincial councils as the corresponding courts of the Colonies have at the establishment of the Union in regard to parliamentary elections in such Colonies respectively.

Continuation in office of existing judges.

**99.** All judges of the supreme courts of the Colonies, including the High Court of the Orange River Colony, holding office at the establishment of the Union shall on such establishment become judges of the Supreme Court of South Africa, assigned to the divisions of the Supreme Court in the respective provinces, and shall retain all such rights in regard to salaries and pensions as they may possess at the establishment of the Union. The Chief Justices of the Colonies holding office at the establishment of the Union shall on such establishment become the Judges-President of the divisions of the Supreme Court in the respective provinces, but shall so long as they hold that office retain the title of Chief Justice of their respective provinces.

Appointment and remuneration of judges.

**100.** The Chief Justice of South Africa, the ordinary judges of appeal, and all other judges of the Supreme Court of South Africa to be appointed after the establishment of the Union shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

Tenure of office by judges.

**101.** The Chief Justice of South Africa and other judges of the Supreme Court of South Africa shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

Reduction in number of judges.

**102.** Upon any vacancy occurring in any division of the Supreme Court of South Africa, other than the Appellate Division, the Governor-General in Council may, in case he

A.D. 1909.

shall consider that the number of judges of such court may with advantage to the public interest be reduced, postpone filling the vacancy until Parliament shall have determined whether such reduction shall take place.

Appeals to Appellate Division.

**103.** In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the Supreme Court of any of the Colonies from a Superior Court in any of the Colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge, upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only, which by law are left to the discretion of the court. The appeal from any such orders or judgments, as well as any appeal in criminal cases from any such Superior Court, or the special reference by any such court of any point of law in a criminal case, shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

Existing appeals.

**104.** In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from the Supreme Court of any of the Colonies or from the High Court of the Orange River Colony to the King in Council, the appeal shall be made only to the Appellate Division: Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

Appeals from inferior courts to provincial divisions.

**105.** In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal

shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal. A.D. 1909.

Provisions as to appeals to the King in Council.

**106.** There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890. 53 & 54 Vict. c. 27.

Rules of procedure in Appellate Division.

**107.** The Chief Justice of South Africa and the ordinary judges of appeal may, subject to the approval of the Governor-General in Council, make rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules shall have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall mutatis mutandis apply.

Rules of procedure in provincial and local divisions.

**108.** The chief justice and other judges of the Supreme Court of South Africa may, subject to the approval of the Governor-General in Council, frame rules for the conduct of the proceedings of the several provincial and local divisions. Until such rules shall have been promulgated, the rules in force at the establishment of the Union in the respective courts which become divisions of the Supreme Court of South Africa shall continue to apply therein.

A.D. 1909.

Place of sittings of Appellate Division.

**109.** The Appellate Division shall sit in Bloemfontein, but may from time to time for the convenience of suitors hold its sittings at other places within the Union.

Quorum for hearing appeals.

**110.** On the hearing of appeals from a court consisting of two or more judges, five judges of the Appellate Division shall form a quorum, but, on the hearing of appeals from a single judge, three judges of the Appellate Division shall form a quorum. No judge shall take part in the hearing of any appeal against the judgment given in a case heard before him.

Jurisdiction of Appellate Division.

**111.** The process of the Appellate Division shall run throughout the Union, and all its judgments or orders shall have full force and effect in every province, and shall be executed in like manner as if they were original judgments or orders of the provincial division of the Supreme Court of South Africa in such province.

Execution of processes of provincial divisions.

**112.** The registrar of every provincial division of the Supreme Court of South Africa, if thereto requested by any party in whose favour any judgment or order has been given or made by any other division, shall, upon the deposit with him of an authenticated copy of such judgment or order and on proof that the same remains unsatisfied, issue a writ or other process for the execution of such judgment or order, and thereupon such writ or other process shall be executed in like manner as if it had been originally issued from the division of which he is registrar.

Transfer of suits from one provincial or local division to another.

**113.** Any provincial or local division of the Supreme Court of South Africa to which it may be made to appear that any civil suit pending therein may be more conveniently or fitly heard or determined in another division may order the same to be removed to such other division, and thereupon such last-mentioned division may proceed with such suit in like manner as if it had been originally commenced therein.

Registrar and officers of

**114.** The Governor-General in Council may appoint a registrar of the Appellate Division and such other officers

thereof as shall be required for the proper dispatch of the business thereof. A.D. 1909.

Appellate Division.

**115.**—(1) The laws regulating the admission of advocates and attorneys to practise before any superior court of any of the Colonies shall mutatis mutandis apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa. Advocates and attorneys.

(2) All advocates and attorneys entitled at the establishment of the Union to practise in any superior court of any of the Colonies shall be entitled to practise as such in the corresponding division of the Supreme Court of South Africa.

(3) All advocates and attorneys entitled to practise before any provincial division of the Supreme Court of South Africa shall be entitled to practise before the Appellate Division.

**116.** All suits, civil or criminal, pending in any superior court of any of the Colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same, and all judgments and orders of any superior court of any of the Colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed. Pending suits.

## VII.—Finance and Railways.

**117.** All revenues, from whatever source arising, over which the several Colonies have at the establishment of the Union power of appropriation, shall vest in the Governor-General in Council. There shall be formed a Railway and Harbour Fund, into which shall be paid all revenues raised or received by the Governor-General in Council from the Constitution of Consolidated Revenue Fund and Railway and Harbour Fund.

A.D. 1909.

administration of the railways, ports, and harbours, and such fund shall be appropriated by Parliament to the purposes of the railways, ports, and harbours in the manner prescribed by this Act. There shall also be formed a Consolidated Revenue Fund, into which shall be paid all other revenues raised or received by the Governor-General in Council, and such fund shall be appropriated by Parliament for the purposes of the Union in the manner prescribed by this Act, and subject to the charges imposed thereby.

nis-
of in-
into
cial
ons
een
and
nces.

**118.** The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—

(*a*) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908–9, as voted by the Legislature of the corresponding colony during the year nineteen hundred and eight;

(*b*) such further sums as the Governor-General in Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.

Until such inquiry shall be completed and Parliament shall have made other provision, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates.

Security for existing public debts.

**119.** The annual interest of the public debts of the Colonies and any sinking funds constituted by law at the

establishment of the Union shall form a first charge on the Consolidated Revenue Fund. A.D. 1909.

Requirements for withdrawal of money from funds.

**120.** No money shall be withdrawn from the Consolidated Revenue Fund or the Railway and Harbour Fund except under appropriation made by law. But, until the expiration of two months after the first meeting of Parliament, the Governor-General in Council may draw therefrom and expend such moneys as may be necessary for the public service, and for railway and harbour administration respectively.

Transfer of Colonial property to the Union.

**121.** All stocks, cash, bankers' balances, and securities for money belonging to each of the Colonies at the establishment of the Union shall be the property of the Union: Provided that the balances of any funds raised at the establishment of the Union by law for any special purposes in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided.

Crown lands, &c.

**122.** Crown lands, public works, and all property throughout the Union, movable or immovable, and all rights of whatever description belonging to the several Colonies at the establishment of the Union, shall vest in the Governor-General in Council subject to any debt or liability specifically charged thereon.

Mines and minerals.

**123.** All rights in and to mines and minerals, and all rights in connection with the searching for, working for, or disposing of, minerals or precious stones, which at the establishment of the Union are vested in the Government of any of the Colonies, shall on such establishment vest in the Governor-General in Council.

Assumption by Union of colonial debts.

**124.** The Union shall assume all debts and liabilities of the Colonies existing at its establishment, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund, and other

A.D. 1909.

charges conferred on the creditors of any of the Colonies, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

Ports, harbours, and railways.

**125.** All ports, harbours, and railways belonging to the several Colonies at the establishment of the Union shall from the date thereof vest in the Governor-General in Council. No railway for the conveyance of public traffic, and no port, harbour, or similar work, shall be constructed without the sanction of Parliament.

Constitution of Harbour and Railway Board.

**126.** Subject to the authority of the Governor-General in Council, the control and management of the railways, ports, and harbours of the Union shall be exercised through a board consisting of not more than three commissioners, who shall be appointed by the Governor-General in Council, and a minister of State, who shall be chairman. Each commissioner shall hold office for a period of five years, but may be re-appointed. He shall not be removed before the expiration of his period of appointment, except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. The salaries of the commissioners shall be fixed by Parliament and shall not be reduced during their respective terms of office.

Administration of railways, ports, and harbours.

**127.** The railways, ports, and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union. So far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbour revenue, and not including any sums

payable out of the Consolidated Revenue Fund in accordance with the provisions of sections one hundred and thirty and one hundred and thirty-one. The amount of interest due on such capital invested shall be paid over from the Railway and Harbour Fund into the Consolidated Revenue Fund. The Governor-General in Council shall give effect to the provisions of this section as soon as and at such time as the necessary administrative and financial arrangements can be made, but in any case shall give full effect to them before the expiration of four years from the establishment of the Union. During such period, if the revenues accruing to the Consolidated Revenue Fund are insufficient to provide for the general service of the Union, and if the earnings accruing to the Railway and Harbour Fund are in excess of the outlays specified herein, Parliament may by law appropriate such excess or any part thereof towards the general expenditure of the Union, and all sums so appropriated shall be paid over to the Consolidated Revenue Fund. A.D. 1909.

Establishment of fund for maintaining uniformity of railway rates.

**128.** Notwithstanding anything to the contrary in the last preceding section, the Board may establish a fund out of railway and harbour revenue to be used for maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic.

Management of railway and harbour balances.

**129.** All balances standing to the credit of any fund established in any of the Colonies for railway or harbour purposes at the establishment of the Union shall be under the sole control and management of the Board, and shall be deemed to have been appropriated by Parliament for the respective purposes for which they have been provided.

Construction of harbour and railway works.

**130.** Every proposal for the construction of any port or harbour works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed. If any such works or line shall be constructed contrary to the advice of the Board, and if the Board is of

A.D. 1909.

opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it shall frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate shall be examined by the Controller and Auditor-General, and when approved by him the amount thereof shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbour Fund: Provided that, if in any year the actual loss incurred, as calculated by the Board and certified by the Controller and Auditor-General, is less than the estimate framed by the Board, the amount paid over in respect of that year shall be reduced accordingly so as not to exceed the actual loss incurred. In calculating the loss arising from the operation of any such work or line, the Board shall have regard to the value of any contributions of traffic to other parts of the system which may be due to the operation of such work or line.

Making good of deficiencies in Railway Fund in certain cases.

**131.** If the Board shall be required by the Governor-General in Council or under any Act of Parliament or resolution of both Houses of Parliament to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the provision of such services or facilities, the Board shall at the end of each financial year present to Parliament an account approved by the Controller and Auditor-General, showing, as nearly as can be ascertained, the amount of the loss incurred by reason of the provision of such services and facilities, and such amount shall be paid out of the Consolidated Revenue Fund to the Railway and Harbour Fund.

Controller and Auditor-General.

**132.** The Governor-General in Council shall appoint a Controller and Auditor-General who shall hold office during good behaviour: provided that he shall be removed by the Governor-General in Council on an address praying for such removal presented to the Governor-General by both Houses of Parliament: provided further that when Parliament is not in session the Governor-General in Council may

suspend such officer on the ground of incompetence or misbehaviour; and, when and so often as such suspension shall take place, a full statement of the circumstances shall be laid before both Houses of Parliament within fourteen days after the commencement of its next session; and, if an address shall at any time during the session of Parliament be presented to the Governor-General by both Houses praying for the restoration to office of such officer, he shall be restored accordingly; and if no such address be presented the Governor-General shall confirm such suspension and shall declare the office of Controller and Auditor-General to be, and it shall thereupon become, vacant. Until Parliament shall otherwise provide, the Controller and Auditor-General shall exercise such powers and functions and undertake such duties as may be assigned to him by the Governor-General in Council by regulations framed in that behalf.

Compensation of colonial capitals for diminution of prosperity.

**133.** In order to compensate Pietermaritzburg and Bloemfontein for any loss sustained by them in the form of diminution of prosperity or decreased rateable value by reason of their ceasing to be the seats of government of their respective colonies, there shall be paid from the Consolidated Revenue Fund for a period not exceeding twenty-five years to the municipal councils of such towns a grant of two per centum per annum on their municipal debts, as existing on the thirty-first day of January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. The Commission appointed under section one hundred and eighteen shall, after due inquiry, report to the Governor-General in Council what compensation should be paid to the municipal councils of Cape Town and Pretoria for the losses, if any, similarly sustained by them. Such compensation shall be paid out of the Consolidated Revenue Fund for a period not exceeding twenty-five years, and shall not exceed one per centum per annum on the respective municipal debts of such towns as existing on the thirty-first January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. For the purposes of

A.D. 1909.

this section Cape Town shall be deemed to include the municipalities of Cape Town, Green Point, and Sea Point, Woodstock, Mowbray, and Rondebosch, Claremont, and Wynberg, and any grant made to Cape Town shall be payable to the councils of such municipalities in proportion to their respective debts. One half of any such grants shall be applied to the redemption of the municipal debts of such towns respectively. At any time after the tenth annual grant has been paid to any of such towns the Governor-General in Council, with the approval of Parliament, may after due inquiry withdraw or reduce the grant to such town.

## VIII.—GENERAL.

Method of voting for senators, &c.

**134.** The election of senators and of members of the executive committees of the provincial councils as provided in this Act shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote. The Governor-General in Council, or, in the case of the first election of the Senate, the Governor in Council of each of the Colonies, shall frame regulations prescribing the method of voting and of transferring and counting votes and the duties of returning officers in connection therewith, and such regulations or any amendments thereof after being duly promulgated shall have full force and effect unless and until Parliament shall otherwise provide.

Continuation of existing colonial laws.

**135.** Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective provinces until repealed or amended by Parliament, or by the provincial councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establishment of the Union shall continue as if the Union had not been established.

**136.** There shall be free trade throughout the Union,

but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force. Free trade throughout Union.

**137.** Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages. Equality of English and Dutch languages.

**138.** All persons who have been naturalised in any of the Colonies shall be deemed to be naturalised throughout the Union. Naturalisation.

**139.** The administration of justice throughout the Union shall be under the control of a minister of State, in whom shall be vested all powers, authorities, and functions which shall at the establishment of the Union be vested in the Attorneys-General of the Colonies, save and except all powers, authorities, and functions relating to the prosecution of crimes and offences, which shall in each province be vested in an officer to be appointed by the Governor-General in Council, and styled the Attorney-General of the province, who shall also discharge such other duties as may be assigned to him by the Governor-General in Council: Provided that in the province of the Cape of Good Hope the Solicitor-General for the Eastern Districts and the Crown Prosecutor for Griqualand West shall respectively continue to exercise the powers and duties by law vested in them at the time of the establishment of the Union. Administration of justice.

**140.** Subject to the provisions of the next succeeding section, all officers of the public service of the Colonies shall at the establishment of the Union become officers of the Union. Existing officers.

**141.**—(1) As soon as possible after the establishment of

A.D. 1909.

Reorganisation of public departments.

the Union, the Governor-General in Council shall appoint a public service commission to make recommendations for such reorganisation and readjustment of the departments of the public service as may be necessary. The commission shall also make recommendations in regard to the assignment of officers to the several provinces.

(2) The Governor-General in Council may after such commission has reported assign from time to time to each province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the province. Pending the assignment of such officers, the Governor-General in Council may place at the disposal of the provinces the services of such officers of the Union as may be necessary.

(3) The provisions of this section shall not apply to any service or department under the control of the Railway and Harbour Board, or to any person holding office under the Board.

Public service commission.

**142.** After the establishment of the Union the Governor-General in Council shall appoint a permanent public service commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall determine.

Pensions of existing officers.

**143.** Any officer of the public service of any of the Colonies at the establishment of the Union who is not retained in the service of the Union or assigned to that of a province shall be entitled to receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

Tenure of office of existing officers.

**144.** Any officer of the public service of any of the Colonies at the establishment of the Union who is retained in the service of the Union or assigned to that of a province shall retain all his existing and accruing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been

entitled by law in like circumstances if the Union had not been established. A.D. 1909.

Existing officers not to be dismissed for ignorance of English or Dutch.

**145.** The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or Dutch language.

Compensation to existing officers who are not retained.

**146.** Any permanent officer of the Legislature of any of the Colonies who is not retained in the service of the Union, or assigned to that of any province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

Administration of native affairs, &c.

**147.** The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General in Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and Executive Council of any colony for the purpose of reserves for native locations shall vest in the Governor-General in Council, who shall exercise all special powers in relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

Devolution on Union of rights and obligations under conventions.

**148.**—(1) All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment.

(2) The provisions of the railway agreement between the Governments of the Transvaal, the Cape of Good Hope, and Natal, dated the second of February, nineteen hundred and nine, shall, as far as practicable, be given effect to by the Government of the Union.

A.D. 1909.

## IX.—NEW PROVINCES AND TERRITORIES.

Alteration of boundaries of provinces.

**149.** Parliament may alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the Union, on the petition of the provincial council of every province whose boundaries are affected thereby.

Power to admit into Union territories administered by British South Africa Company.

**150.** The King, with the advice of the Privy Council, may on addresses from the Houses of Parliament of the Union admit into the Union the territories administered by the British South Africa Company on such terms and conditions as to representation and otherwise in each case as are expressed in the addresses and approved by the King, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

Power to transfer to Union government of native territories.

**151.** The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the Schedule to this Act.

## X.—AMENDMENT OF ACT.

Amendment of Act.

**152.** Parliament may by law repeal or alter any of the provisions of this Act: Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered: And provided further that no repeal or alteration of the provisions contained in this section, or in sections thirty-three and thirty-four (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the estab-

lishment of the Union, whichever is the longer period), or in sections thirty-five and one hundred and thirty-seven, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament. A.D. 1909.

# SCHEDULE.

A.D. 1909.

Section 151.

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the

Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity. A.D. 1909.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General in Council, whose decision in the matter shall be final.

A.D. 1909.

10. When the recommendations of the commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council, the Prime Minister, if thereto requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General in Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General in Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the

Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory. A.D. 1909.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the

A.D. 1909. Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.